TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 403

MARINE COOKS & STEWARDS, AFL, ETC., ET AL.,
PETITIONERS,

vs.

PANAMA STEAMSHIP COMPANY, LTD., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 14, 1959
CERTIORARI GRANTED NOVEMBER 16, 1959

No. 15637

United States
Court of Appeals
for the Ninth Circuit

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, VIRGIL ROGERS and WILLARD RICHARDS, Appellants,

vs.

PANAMA STEAMSHIP COMPANY, LTD., a corporation, et al., Appellees.

Transcript of Record

Appeal from the United States District Court for the Western District of Washington, Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorneys for Appellees.

In The United States District Court, Western District of Washington, Southern Division

Civil No. 2168

PANAMA STEAMSHIP CO., LTD., a corporation, SEATANKERS, INC., a corporation, and SOCRATES PALEOCRASSAS, an individual, Plaintiffs,

vs.

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, JOHN DOE ONE, JOHN DOE TWO, JOHN DOE THREE, JOHN DOE FOUR, individual members of above voluntary association; SEAFARER'S INTERNATIONAL UNION OF NORTH AMERICA, a voluntary association, PAUL HALL, JAMES DOE ONE, JAMES DOE TWO, JAMES DOE THREE and JAMES DOE FOUR, individual members of above association; INTERNATIONAL BROTHERHOOD OF LONGSHOREMEN, a voluntary association, and JOE DOE ONE, JOE DOE TWO, JOE DOE THREE, individual members of the association; INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, Local 19, and ROBERT DOE ONE, ROBERT DOE TWO, ROBERT DOE THREE AND ROBERT DOE FOUR, individual members of above voluntary association; SAILORS UNION OF THE PACIFIC, a voluntary association and RALPH DOE ONE, RALPH DOE TWO, RALPH DOE THREE AND RALPH DOE FOUR, individual members of the above voluntary association; INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, INC., a corporation and WILLIAM DOE ONE, WILLIAM DOE TWO AND WILLIAM DOE THREE, individual members of the above corporation; INLAND BOATMEN'S UNION OF PACIFIC, a voluntary association, JOHN M. FOX, FRANK DOE ONE, FRANK DOE TWO, FRANK DOE THREE, individual members of the above voluntary association; MARINE FIREMEN, OILERS, WATERTENDERS & WIPERS ASS'N. OF PACIFIC COAST, a voluntary association, TOM DOE ONE, TOM DOE TWO, TOM DOE THREE, individual members of above voluntary association; and ED DOE ONE, ED DOE TWO, ED DOE THREE, ED DOE FOUR, ED DOE FIVE, Defendants.

COMPLAINT

Plaintiffs above named and each of them for their complaint seeking injunctive relief and compensatory damages against the defendants above named and each of them allege:

I.

That the plaintiff Panama Steamship Co., Ltd., at all times material was and now is a foreign corporation and the owner of the Steamship "Nikolos";

II.

That the plaintiff Seatankers, Inc., at all times material was and now is a foreign corporation and charterer of the Steamship "Nikolos";

III.

That the plaintiff Socrates Paleocrassas at all times material was and now is an individual and the Master of the Steamship "Nikolos";

IV.

That excepting only the individual defendants above named, all defendants are either corporations or associations existing and acting as unions of organized labor. That the defendant James O. Willoughby, at all times material was and now is representative of the defendant Marine Cooks & Stewards, AFL, acting locally in behalf of that defendant and all other defendants. That the defendant Paul Hall, at all times material was and now is the controlling executive representative of

the defendant Seafarer's International Union of North America, acting in New York City in behalf of said defendant and all other defendants.

V.

That the Steamship "Nikolos" at all times material was and now is a foreign merchant vessel of Liberian registry (Official No. 396) presently having aboard a full cargo of some 8,570 long tons of bulk salt loaded at the port of Black Warrior Lagoon on the Pacific West Coast of Mexico for transportation to the Port of Tacoma in the State of Washington there to be discharged at a safe berth for delivery to the consignee Hooker Electro-Chemical Company, all pursuant to charter and affreightment contract as effective during the current voyage.

VI.

That the Master, Officers, and Crew of said Steamship are all aliens, none being a citizen of the United States. That such Officers and Crew are serving aboard said Steamship under Articles of Employment subject to the laws of the Republic of Liberia. That between the plaintiffs and said personnel aboard said Steamship neither strike nor labor dispute of any sort has existed at any time material, and that none such exists at the present time.

VII.

That with the assistance of a licensed Puget Sound Pilot said Steamship arrived in the harbor of the Port of Tacoma at 01:50 hours on the 10th

of June, 1957, when and where said Steamship was prevented from proceeding to consignee's intended berth for discharge and delivery of said cargo by the vessel "Will-O-Bee" which was displaying a sign reading "Picket Boat" and which was acting as such for the defendant Marine Cooks & Stewards, AFL, in behalf of all defendants.

That boarding said Steamship from said picket boat, the defendant James O. Willoughby, speaking in behalf of the defendant Marine Cooks & Stewards, AFL, and in the interest of all defendants notified the Master of said Steamship that it was being picketed by the defendants in protest of its current voyage, the same being characterized as a "coastwise voyage." That further the defendant James O. Willoughby then warned the Master that such picketing would be maintained as necessary to prevent said Steamship from proceeding to berth and to prevent its said cargo from being discharged and delivered, for which purpose a picket line would be established ashore as necessary, which same would be honored by all longshoremen and all other labor directly or indirectly involved.

VIII.

That promptly after so arriving in the harbor at the Port of Tacoma said Steamship became lawfully entitled to discharge and deliver said cargo at the consignee's intended berth by having been officially cleared and passed by all United States Immigration, Quarantine and Customs authorities. That said Steamship now continues entitled so to do.

IX.

That due solely to the continued maintenance in the vicinity of said Steamship of the vessel "Will-O-Bee" as a picket boat, said Steamship has been deprived of the required assistance of both said Puget Sound Pilot and the usual tug, the same being necessary to reach the consignee's intended berth, and also said Steamship has been compelled to remain in said harbor at anchor until the present time.

That since said Steamship so arrived in the harbor at the Port of Tacoma earnest repeated efforts for the plaintiffs, through their representatives, in treating with the defendant unions have wholly failed to induce them or any of them to discontinue said picketing or to permit said Steamship to proceed with performance of obligations to said consignee.

That, such efforts with the defendants proving obviously futile in an attempt to complete the current voyage orders on the 12th of June, 1957, were issued in behalf of said Steamship for the services of a licensed Puget Sound pilot and a competent tug to render assistance enabling said Steamship to be secured at consignee's intended berth; but that on account of such picketing as above described and under the influences exerted by the defendants, said assistance of such pilot and such tug then were and still are withheld from the plaintiffs.

X.

That an actual bona fide labor dispute of any

sort, at all times material has been and now is, non-existent as between the plaintiffs and the personnel in service aboard said Steamship which is operating upon the current voyage in violation of no commitment with the defendants or any of them.

XI.

That both the independent and concerted actions of the defendants in continued operation of the vessel "Will-O-Bee" as a picket boat together with additional and different actions by the defendants including their inducements to or their threats against other labor organizations resulting in a united front of all necessary labor effectively frustrating the plaintiffs in the completion of the current voyage of said Steamship is an unlawful and coercive conspiracy which violates the plaintiffs' maritime contractual rights in legitimate foreign commerce entitling plaintiffs to immediate and permanent injunctive relief.

That in effect by such actions the defendants have established and threaten to maintain an unlawful secondary boycott against the consignee Hooker Electrochemical Company, a New York corporation, as related to its manufacturing plant at the Port of Tacoma in the State of Washington. That by such boycott, said consignee is being obstructed in its right to the lawful importation of the cargo aboard the vessel.

XII.

That as the direct result of such unlawful conduct by the defendants in cooperating together and in

influencing other unions controlling essential labor, the plaintiffs have already sustained damages reasonably estimated at the sum of $100,000.00, the amount of which is to be determined by proof submitted during the trial on the merits.

That as the direct and indirect results of such wrongful conduct by the defendants, if the same be continued, the plaintiffs will hereafter suffer aggravated and irreparable damages in an undeterminable and unrecoverable amount.

Wherefore, the plaintiffs pray for relief and remedy as follows:

1. Upon final judgment in this action, permanent injunction prohibiting and enjoining all defendant individuals and all defendant unions of organized labor, whether corporations or associations, together with each and all of their members, officers, representatives, agents, employees and all others heretofore or hereafter acting in behalf of or in concert with said defendants or any of them, from directly or directly by picketing or by any other means at any time or in any manner, preventing, obstructing or delaying the arrival of said Steamship "Nikolos" at the consignee's intended berth, the discharge of said cargo from said Steamship or the delivery of said cargo to such consignee; and also from directly or indirectly interfering in any degree with full, faithful performance of such affreightment contract by which said Steamship is obligated to such consignee.

2. During the pendency of this action, a tempo-

rary injunction likewise prohibiting and enjoining all such defendants, and each of them, together with all such others above mentioned acting heretofore or hereafter as above specified.

3. Forthwith, upon presentation of this complaint with supporting affidavits, a temporary restraining order likewise prohibiting and enjoining all such defendants, and each of them, together with all such others above mentioned acting heretofore or hereafter as above specified.

4. By final judgment in this action, an award in favor of plaintiffs against defendants for the amount of plaintiffs' damages as established by proofs at the trial.

5. Such additional or different relief or remedy to which the plaintiffs may be entitled during the pendency hereof or at the conclusion hereof.

SUMMERS, BUCEY & HOWARD,
/s/ LANE SUMMERS,
/s/ CHARLES B. HOWARD,
Attorneys for Plaintiffs above named.

Duly Verified.

United States of America,
State of Washington,
County of King—ss.

Alvin E. Schultze, being first duly sworn, on oath deposes and says:

That he is employed as Assistant Operating Man-

ager of National Bulk Carriers, Inc., and Affiliates. That Seatankers, Inc., one of the plaintiffs in this action is a subsidiary of National Bulk Carriers, Inc., and is the sub-time charterer of the SS Nikolos from North Atlantic and Gulf Steamship Co., Inc., the primary time charterer of the SS Nikolos. That Transea Carriers, Inc., an affiliate or subsidiary of National Bulk Carriers has a contract of affreightment with Hooker Electro-Chemical Co. of Tacoma for transportation of a full cargo of approximately 8,570 long tons of bulk salt aboard the SS Nikolos from Black Warrior Lagoon, Mexico to Tacoma, Washington, for delivery to and discharge at the terminal dock of Hooker Electro-Chemical Co. That affiant has been at Tacoma, Washington during the last few days to represent Seatankers, Inc. and Transea Carriers, Inc., in connection with the arrival of said vessel and the intended discharge of its cargo of bulk salt. By the terms of the charter, Seatankers, Inc., is obliged to provide pilotage and tug assistance as required to enable the vessel to proceed to its intended berth at Hooker Electro-Chemical Co. dock at Tacoma.

At the request of affiant, C. R. Swenson of J. T. Steeb & Co., Inc., agents and customs brokers did, at 0150 hours on June 10, 1957 make verbal tender of the SS Nikolos to Hooker Electro-Chemical Company, upon arrival of the vessel in Tacoma Harbor. Thereafter this verbal tender was confirmed by the aforesaid agents and brokers, after receipt of notification from the Shift Superintendent of Hooker Electro-Chemical as follows:

"Because the ship cannot unload its salt cargo and perform in accordance with our contract with Transea Carriers we cannot provide moorage at our dock."

Affiant is informed and believes that on June 10, 1957, and subsequently, the SS Nikolos has at all times been prepared and capable of moving from Tacoma Harbor to berth at Hooker Electro-Chemical Company, being prevented from doing so solely because of activities of a so-called picket boat circling around and near the vessel while at anchorage and the apprehension and fear of officials of Hooker Electro-Chemical Company that if the vessel berths at its plant, a picket line will be set up by one or more of the defendants hereinabove named, which would be honored by plant employees of Hooker Electro-Chemical Company, or employees of independent contractors, thus causing a total or partial shutdown of its operations, although said company is not involved in any strike or labor dispute.

That on June 11 and on June 12 affiant made further efforts to arrange for removal of the so-called picket boat and for assurances that no picket line would be established at the Hooker Electro-Chemical Company plant in the event that the SS Nikolos proceeded to berth thereat. That such efforts have been unsuccessful and, affiant is now informed that local representatives of longshoremen's unions at Tacoma and/or Seattle have indicated to employer representatives that longshoremen will refuse to work in discharging cargo from the SS Nikolos at Tacoma, until instructed to the

contrary by officials of the international unions involved, whether a picket line is maintained or in respect to a so-called "invisible picket line."

/s/ ALVIN E. SCHULTZE

Subscribed and sworn to before me this 12th day of June, 1957.

[Seal] /s/ CHARLES B. HOWARD,
Notary Public in and for the State of Washington, residing at Seattle.

United States of America,
State of Washington,
County of King—ss.

Socrates Paleocrassas, being first duly sworn, on oath deposes and says:

That I am a citizen of Greece and am now and for over 3 years last past have been the master of the SS Nikolos. That said vessel is owned by Panama Steamship Co., Ltd., a corporation, and is registered and operated under the Liberian flag.

That none of the officers or members of the crew of the SS Nikolos are United States citizens, said crew being composed almost entirely of Greek nationals, except for two crew members of Egyptian nationality, two crew members of Portuguese nationality and one British wireless operator. That all of said officers and crew members have heretofore signed Articles of Shipment prepared under the laws of the Republic of Liberia and opened at Cardiff, Wales, on May 24, 1954, which said Articles

are effective and controlling as to employment since the voyage or voyages contemplated thereby have not been terminated to date.

That the owners and operators of the SS Nikolos are parties to a labor agreement with the Panhellenic Maritime Federation of Greece and its branch unions representing the various categories of officers, engineers and unlicensed members of the crew. That affiant has been and now is paying wages to said officers and crew members of the SS Nikolos equal to or in excess of the amounts specified under the aforesaid Greek labor agreement with the Panhellenic Maritime Federation.

That at this time, and for many months in the immediate past, all officers and crew members on the SS Nikolos have been contented in their employment and there has been and is not now any labor dispute, strike, or labor discontent among the officers and crew members or between them and affiant as master, or with the owner and operators of said vessel.

That upon arrival of the SS Nikolos at Tacoma Harbor on the early morning of June 10, 1957, the SS Nikolos was in all respects seaworthy and capable of proceeding to berth at the Hooker Electrochemical Company dock for the purpose of discharging a full cargo of bulk salt then aboard, which had been loaded aboard at Black Warrior Lagoon, Mexico, before departure from that port for Tacoma on June, 1957.

That since arrival of the SS Nikolos at Tacoma

on June 10, 1957 said vessel has at all times been ready to proceed to discharging berth, being prevented from doing so by reason of lack of tug assistance and pilotage, which was requested on June 12, 1957 but was not then, or since, supplied.

That commencing on the morning of June 10, 1957, a small cabin cruiser bearing the name Will-O-Bee has been more or less constantly present in the vicinity of the SS Nikolos at its position of anchorage in Tacoma Harbor. Said small boat bears one or more signs upon which appear the words "Picket Boat". That on the morning of June 10, 1957, at approximately 0900 hours one James O. Willoughby boarded the SS Nikolos from said small boat. Mr. Willoughby identified himself as a business agent for the Marine Cooks & Stewards, AFL. He indicated that upon instructions from the international headquarters for his union at New York City local members of the Marine Cooks & Stewards Union were undertaking to prevent the docking and discharge of the SS Nikolos. Affiant can state that no members of the crew of the SS Nikolos are members of the Marine Cooks & Stewards, AFL, or in any manner affiliated with said union. Affiant further states that since the SS Nikolos is operating under Liberian flag, and crew members are parties to an agreement with the shipowner through the Panhellenic Maritime Federation, that American unions such as the Marine Cooks & Stewards, AFL, and other unions named as defendants in this cause, would have no jurisdiction over the crew members and labor agreements

entered into by or upon behalf of the crew members of the SS Nikolos.

/s/ SOCRATES PALEOCRASSAS.

Subscribed and sworn to before me this 12th day of June, 1957.

[Seal] CHARLES B. HOWARD,
Notary Public in and for the State of Washington,
residing at Seattle.

United States of America,
State of Washington,
County of Pierce—ss.

Carl R. Swenson, being first duly sworn, deposes and says:

That he is a resident of Tacoma, Washington and manager of the Tacoma office of J. T. Steeb & Co., Inc. That said company is acting as agents and customs brokers for Seatankers Inc. and Transea Carriers, Inc. at Tacoma in connection with the arrival and discharging of the SS Nikolos.

That upon arrival of the SS Nikolos in Tacoma Harbor at 0150 hours on June 10, 1957, pursuant to instructions from Mr. Alvin E. Schultze of Seatankers, Inc., representing Transea Carriers, Inc., affiant verbally tendered the SS Nikolos to Hooker Electrochemical Company in accordance with the Contract of Affreightment. Shortly thereafter, the Shift Superintendent for Hooker Electrochemical Company replied with the following message:

"Because the ship cannot unload its salt cargo

and perform in accordance with our contract with Transea Carriers we cannot provide moorage at our dock."

Said exchange of message was confirmed in writing by affiant later on June 10, 1957.

That prior to 0900 hours on 10 June, 1957 affiant had secured all necessary customs clearance and the ship had already been cleared as required for immigration and quarantine purposes at San Pedro, California. That affiant is informed and believes that the ship was at all times capable and ready to proceed to berth at Hooker Electrochemical Company at Tacoma, being unable to do so solely because of the presence of a small boat carrying the name Will-O-Bee in and near the vicinity of the SS Nikolos in Tacoma Harbor, which affiant personally observed at about 0600 hours on 10 June, 1957, which boat carried one or more signs containing the words "Picket Boat". That affiant is informed and believes that said boat has been more or less constantly present about and near the SS Nikolos while at anchor in Tacoma Harbor.

Affiant is further informed and believes that Hooker Electrochemical Company have based their refusal to provide a berth or moorage for the SS Nikolos upon the fear of shutdown which might result at their Tacoma plant if a so-called picket line, as affiant understands has been threatened, is set up around the plant after arrival and berthing of the SS Nikolos for purpose of discharging its cargo.

That during June 10, 11 and 12 affiant in cooperation with Mr. Schultze has continued with diligent

efforts to arrange for berthing of the SS Nikolos and/or removal of the picket boat and threat of shore picket line. That in cooperation with Mr. Schultze, affiant did on the afternoon of June 12, 1957 request Foss Launch & Tug Co. to provide tug assistance, and Puget Sound Pilots to provide a licensed Puget Sound Pilot for the purpose of moving the SS Nikolos from anchorage in Tacoma Harbor to berth at the Hooker Electrochemical Company dock at Tacoma, said move having been scheduled for approximately 5:00 P.M. on June 12, 1957. Arrangements were likewise made for 2 gangs of longshoremen to be called for discharge work commencing at 7:00 P.M. on June 12 and 3 gangs to be called for work on the morning of June 13, 1957. That around 5:00 P.M. on June 12, 1957 affiant and Mr. Schultze were notified that the Foss Launch & Tug Co. would be unable to provide tug assistance to the SS Nikolos because defendant John M. Fox representing defendant Inland Boatman's Union of the Pacific had advised the tugboat company that the SS Nikolos was regarded as a "hot ship". Because of the refusal of tug assistance the pilot was unable to proceed with the requested movement of the ship and it will be impossible to use the gangs of longshoremen who have been ordered and dispatched for intended discharging operations on the evening of June 12 and the morning of June 13, 1957.

That when affiant was aboard the SS Nikolos between 0600 and 0930 hours on June 10, 1957 one James O. Willoughby came aboard the SS Nikolos

from the so-called picket boat, identifying himself as a business agent for the Marine Cooks & Stewards, AFL. Said Willoughby examined the copy of labor agreement produced by the master, between the shipowners and certain Greek labor union groups. Affiant was given to understand by Mr. Willoughby that the so-called picket boat and other coercive action was being taken by the Marine Cooks & Stewards, AFL ostensibly on the basis that this vessel was in a so-called coastal trading operation between the west coast of Mexico and U. S. Pacific Coast Ports (Tacoma). That affiant had been notified by said J. O. Willoughby that the vessel would be picketed upon arrival if its crew was not organized in unions recognized by the International Transport Federation.

As of late afternoon of June 12, 1957, affiant personally observed that the so-called picket boat Will-O-Bee was still present in the vicinity of the SS Nikolos at anchor in Tacoma Harbor.

/s/ CARL R. SWENSON.

Subscribed and sworn to before me this 13th day of June, 1957.

/s/ CHARLES B. HOWARD,
Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed June 13, 1957.

[Title of District Court and Cause.]

SUMMONS

To the Defendants Above Named:

You and each of you are hereby summoned and required to serve upon Summers, Bucey & Howard, plaintiffs' attorneys, whose address is suite 840 Central Building, Seattle 4, Washington, an answer to the complaint, which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so judgment by default will be taken against you for the relief demanded in the complaint.

Dated this 14th day of June, 1957, at Tacoma, Washington.

[Seal] MILLARD P. THOMAS,
Clerk,

/s/ By ROSEMARY D. FREENY,
Deputy Clerk.

[Title of District Court and Cause.]

RETURN ON SERVICE OF WRIT

United States of America,
Western District of Washington—ss.

I hereby certify and return that I served the annexed Summons, Complaint, and Order to Show Cause for Preliminary Injunction on the thereinnamed James O. Willoughby by handing to and

leaving two true and correct copies thereof with him personally, one service as an individual and one as Business Agent of the Marine Cooks & Stewards, AFL at 2:10 P.M. at 605 Alexander, Tacoma, Washington, in said District on the 14th day of June, 1957. Service $8.00.

W. B. PARSONS,
U. S. Marshal,

/s/ By RICHARD S. OSBORN,
Deputy.

AMENDED RETURN ON SERVICE OF WRIT

United States of America,
Western District of Washington—ss.

I hereby certify and return that I served the annexed Summons, Complaint and Order to Show Cause for Preliminary Injunction on the thereinnamed Marine Cooks & Stewards, AFL by handing to and leaving a true and correct copy thereof with both Virgil Rogers, John Doe I and Willard Richards, John Doe II, each being a member of the above association, while they were aboard the picket boat "Will-O-Bee", moored at 605 Alexander Avenue personally at 11:45 A.M. in said District on the 14th day of June, 1957.

W. B. PARSONS,
U. S. Marshal,

/s/ By RICHARD S. OSBORN,
Deputy.

Marshal's costs:

Service	8.00
Mileage	1.40
	9.40

[Endorsed]: Returns Filed June 28, 1957.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

The above entitled action having come before the above entitled court, the undersigned Judge presiding, upon motion of the plaintiffs above named for order to show cause why the defendants above named should not be subjected to temporary injunction restraining them as sought by the plaintiffs, and it appearing to the court from the verified complaint of the plaintiffs together with affidavits in support thereof that such motion should be granted;

Now, Therefore, It Is Hereby Ordered, as follows:

1. That the defendants above named and each of them are directed and required to be and appear before the above entitled court, the undersigned Judge presiding, in the Federal Building at Tacoma, Washington on the 15th day of June, 1957, at the hour of 10:00 o'clock A.M. or as soon thereafter as hearing may be had, there and then to show cause why they and each of them should not be sub-

jected forthwith to temporary restraining order enjoining them and each of them as prayed by the plaintiffs' verified complaint or as otherwise directed and required by said court.

2. That certified copy of this order, together with copy of summons, copy of said verified complaint, and copy of said affidavits be supplied forthwith to the United States Marshal for the earliest possible service upon said defendants and each of them who may be found for such service not later than 5:00 P.M. on the 14th day of June, 1957.

3. That the United States Marshal is directed and required to exercise the most diligent effort in effecting earliest possible service upon said defendants and each of them.

Done in Open Court this 14th day of June, 1957.

/s/ GEO. H. BOLDT,
United States District Judge.

Presented by

/s/ CHARLES B. HOWARD,
Of Summers, Bucey & Howard,
Attorneys for Plaintiffs.

[Endorsed]: Filed June 14, 1957.

[Title of District Court and Cause.]

AFFIDAVIT AND RESPONSE TO ORDER TO SHOW CAUSE

James O. Willoughby, being first duly sworn on his oath, deposes and says:

He is one of the defendants above named and is Seattle agent of Marine Cooks & Stewards, AFL, herein called MCS, a voluntary association commonly known as a labor union, and makes this affidavit in response to the Order to Show Cause heretofore made and issued herein on the 14th day of June, 1957.

Marine Cooks & Stewards, AFL, is an autonomous national local union affiliated with the Seafarers International Union of North America and has its headquarters in San Francisco, California and maintains a branch office in Seattle, Washington. Your affiant is, as above stated, the agent of said organization at its offices in Seattle, Washington.

Marine Cooks & Stewards, AFL, is a labor organization comprised of a membership of approximately 5,000 members who are employed in the steward's department of vessels primarily plying the Pacific Coast trade. Said labor organization, the Sailors Union of the Pacific, another autonomous affiliate of the Seafarers International Union of North America, and the Marine Firemen, Oilers, Water Tenders & Wipers Association, another au-

tonomous affiliate of the Seafarers International Union of North America, organized as the Pacific District of said International Union, have been certified by the National Labor Relations Board as the collective bargaining agent for all unlicensed personnel, including steward's department personnel, on all vessels operated by the employer members of the Pacific Maritime Association and the Pacific Shipowners Association, comprising approximately 90 per cent of the vessels flying the American flag plying the Pacific Ocean in merchant and maritime commerce.

Pursuant to said certification, the Marine Cooks & Stewards, AFL, has entered into contracts with said employer associations providing for minimum wages, hours, and working conditions, health and safety regulations, health and welfare payments, pension provisions, and so forth, as are usual and customary in collective bargaining today.

Affiant learned that the SS Nikolos was a foreign flag vessel and was about to embark upon a course of coastal shipping between Mexico and the United States, hauling salt, in competition with vessels operated by employers under the aforesaid contract or contracts with the MCS and its affiliates.

The affiant also learned that due to the procuring of said employment by the SS Nikolos, the SS Ira Nelson Morris, a vessel operated by a company affiliated with the Pacific Maritime Association, namely Coastwise Lines, and under contract to the MCS, lost said business and was tied up and rendered inactive in the Port of San Francisco and

laid off its crew, some of whom were members of MCS.

Affiant is unfamiliar with the intricate and involved corporate machinations of the alleged owners and/or operators of the SS Nikolos and is unable to affirm or deny, and therefore denies the allegations of the complaint and its supporting affidavits relative to the corporate status of the Panama SS Co., Ltd., the Seatankers, Inc., the North Atlantic and Gulf SS Co., Inc., and Transea Carriers, Inc., all of whom are referred to and alleged in the complaint and affidavits herein to have some part in the ownership or operation of the SS Nikolos.

Affiant states that the SS Nikolos is a Liberty ship built during the period of World War II as a war vessel and at the expense of the United States Government and was sold to one or the other of the numerous and intricate corporate entities referred to in the complaint and affidavits in support thereof.

After said sale the SS Nikolos was promptly registered under the foreign flag operation, thereby evading the wages, hours, and working conditions of American seamen. Not only did the foreign registry evade collective bargaining with American trade unions and the resultant maintenance of the wages, hours, and working conditions thereof, but also evaded the laws of the United States relating to the wages of seamen, the minimum safety requirements of ships, and the numerous other provisions of the Federal law applicable thereto.

In the operation of its vessel, the SS Nikolos, the

plaintiffs pay less than one-fifth of the customary and going wage rates in the Pacific area for American-flag vessels and do not maintain the minimum health, safety, and other protections guaranteed by the laws of the United States to merchant seamen.

On or about June 10th, 1957, in the morning, affiant was in the Tacoma Harbor in his personally owned vessel, the "Will-O-Bee", when the vessel, the SS Nikolos, was at anchor in said harbor. The affiant procured a sign saying "Picket Boat" and proceeded to peacefully navigate around the SS Nikolos. A tug boat came along side on the morning of June 10th, stayed a short while, and left. Thereafter, on Monday and Tuesday affiant continued to peacefully and sporadically encircle the SS Nikolos, his boat bearing said sign. Affiant at no time had more than two men plus himself on the picket boat and usually only one. Affiant did not engage in any violence or make any threats of harm or violence of any kind to any plaintiff or any of their representatives or employees or any other persons whatsoever in connection with this dispute. Affiant has received no order from any public officer whatsoever and has engaged in no conversation with any public officer or in any way indicated or stated or threatened that he would not comply with any order of any public officer made in the official course of said officer's duty.

That on or about Wednesday, June 12th, 1957, about 5:30 or 6:00 o'clock P.M., a tug boat came to the SS Nikolos and moved it about 500 yards to a

safer anchorage. At no time did affiant or any other person connected with this dispute, to your affiant's knowledge, attempt in any way to interfere with said movement of said vessel.

At no time has your affiant attempted to cause or induce any of the crew members of the SS Nikolos to leave said vessel or to cease performing their work, or to refuse to obey orders or made any other request of any form whatsoever of any crew member of the SS Nikolos concerning his relationship with his employer.

With reference to the statement made in the affidavit of Carl R. Swenson, attached to the complaint, regarding the International Transport Federation and in connection with the statements in the several affidavits as to affiant's relationship to the Seafarers International Union of North America, affiant states that he was informed by one Schultze, who verified the complant herein, that this entire matter had been cleared with Mr. Paul Hall, the President of the Seafarers International Union of North America, and that plaintiffs had convinced Mr. Hall that the vessel was and would be in compliance with the standards set up by the International Transport Federation. That the International Transport Federation is a worldwide organization of unions engaged in the transportation industry, and that one of the principles adopted by said organization is that where a vessel operates in a coastal operation, as does the SS Nikolos here, as

distinguished from a trans-ocean or world-trade operation, said vessel will comply with the wages, hours, and working conditions prevalent in the area in which it operates. That affiant checked with the office of Mr. Paul Hall and was told that no such contact had been made.

Affiant discussed this matter with Mr. Schultze, who verified the complaint herein, and with Mr. Swenson, whose affidavit is attached to the complaint, as the agents of one or more of the plaintiff companies, both of whom denied any authority to enter into negotiations leading to any understanding with your affiant which would in any way adjust the dispute between the MCS and one or more of the plaintiff corporations, and affiant has not been able to find or talk with any person or persons in this area or been referred to any person who could be contacted by long-distance who would admit to having the authority to negotiate and adjust the difference with affiant's organization.

/s/ JAMES O. WILLOUGHBY.

Subscribed and sworn to before me this 15th day of June, 1957.

[Seal] J. DUANE VANCE,

Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed June 15, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for hearing before the undersigned Judge of the above entitled court at Tacoma, Washington on June 15 and continuing on June 17, 1957 upon an order to show cause why a preliminary restraining order or temporary injunction should not be issued against the defendants as prayed for in the verified complaint on file herein, plaintiffs appearing and being represented by their attorneys Summers, Buecy & Howard, Charles B. Howard and John D. Mosser of counsel, defendants Marine Cooks and Stewards, AFL, a voluntary association and James O. Willoughby, and Virgil Rogers and Willard Richards otherwise designated as John Doe One and John Doe Two respectively, individual members of the above voluntary association appearing and being represented by J. Duane Vance and Ivar Peterson, their attorneys, the International Organization of Masters, Mates and Pilots, Inc., a corporation, and George J. Decker and Delbert J. Kelley otherwise designated as William Doe One and William Doe Two respectively, individual members of the above corporation, appearing and being represented by their attorneys Levinson and Friedman, Sam Levinson of counsel, the International Brotherhood of Longshoremen, a voluntary association, and L. B. Connell otherwise designated as Joe Doe One, individual member of the above voluntary association

appearing and being represented by Jack E. Tanner, their attorney, and the other defendants not having been served and not being before the court; the court having considered the verified complaint, the affidavits filed in support of and opposition thereto, the oral testimony of witnesses produced on behalf of the plaintiffs and the defendants and having heard arguments of counsel and considered the briefs and authorities submitted upon behalf of plaintiffs and defendants does hereby make its

Findings of Fact

I.

The plaintiff Panama Steamship Co., Ltd., at all times material was and now is a foreign corporation and the owner of the Steamship "Nikolos".

II.

The plaintiff Seatankers, Inc., at all times material was and now is a foreign corporation and time charterer of the Steamship "Nikolos".

III.

The plaintiff Socrates Paleocrassas at all times material was and now is an individual and the Master of the Steamship "Nikolos".

IV.

At all times material, the defendants James O. Willoughby, John Doe One, whose real and true name is Virgil Rogers, and John Doe Two, whose real and true name is Willard Richards, were and

are now members of defendant Marine Cooks and Stewards, AFL, a voluntary association and autonomous national labor union with its headquarters in San Francisco, California and a branch office in Seattle, Washington. At all times material, defendant Willoughby was and is now the duly authorized Port Agent of defendant Marine Cooks and Stewards, AFL at Seattle, Washington, and its principal officer and agent in the Puget Sound area.

V.

The Steamship "Nikolos" at all times material was and now is a foreign merchant vessel registered under the laws of the Republic of Liberia (Official No. 396), having aboard a full cargo of some 8,570 long tons of bulk salt loaded at the port of Black Warrior Lagoon on the Pacific West Coast of Mexico for transportation to the Port of Tacoma in the State of Washington there to be discharged at a safe berth for delivery to the consignee Hooker Electrochemical Company, all pursuant to lawful charter and affreightment contract as effective during the current voyage.

VI.

The Master, Officers, and Crew of said Steamship are all aliens, none being a citizen of the United States. That such Officers and Crew are serving aboard said Steamship under Articles of Employment subject to the laws of the Republic of Liberia.

VII.

Pursuing the voyage called for by said charter

and contract, said SS "Nikolos" arrived in Tacoma Harbor, Washington, about 01:50 A.M., on June 10, 1957.

VIII.

Promptly after having so arrived said Steamship became lawfully entitled to discharge and deliver said cargo having then been cleared and passed by the United States Immigration, Quarantine, and Customs authorities.

IX.

Shortly thereafter, in the early morning hours of the 10th of June, 1957, said Steamship was approached at anchorage by the vessel "Will-O-Bee" displaying a "Picket Boat" sign, operating as such and carrying the defendant James O. Willoughby who boarded said Steamship and who then and there notified the Master that said Steamship was being picketed by the defendant Marine Cooks & Stewards, AFL.

X.

Thereafter said vessel "Will-O-Bee", operated by defendants James O. Willoughby, Virgil Rogers and Willard Richards continued to act as a picket boat around said SS "Nikolos".

XI.

Both prior to and subsequent to the arrival of the SS "Nikolos" the defendant Willoughby threatened said Hooker Electrochemical Company with establishment of a picket line at its dock if said SS "Nikolos" was allowed to berth thereat.

San Francisco, California, and are identified as follows:

1. Complaint (with Affidavits of Alvin E. Schultze, Socrates Paleocrassas and Carl R. Swenson (requested by Items 4, 5 and 6 of Defendants' Designation) (filed June 13, 1957).

2. Summons, with Marshal's return of service of Summons, Complaint and order to Show Cause upon: James O. Willoughby, individually and as business agent for Marine Cooks, etc. and Virgil Rogers (John Doe I) and Willard Richards (John Doe II) (requested by Items 1 and 2 of Plaintiffs' Designation) (filed June 28, 1957).

3. Order to Show Cause (filed and entered June 14, 1957).

4. Affidavit of James O. Willoughby to Order to Show Cause (filed June 15, 1957).

5. Findings of Fact and Conclusions of Law (filed and entered June 19, 1957).

6. Temporary Injunction (filed and entered June 19, 1957).

7. Notice of Appeal, defendants above named (filed July 1, 1957).

8. Cost Bond on Appeal (filed July 1, 1957).

9. Statement of Points (filed July 1, 1957).

10. Defendants' Designation of Contents of Record (filed July 1, 1957).

11. Request for Forthwith Certification (filed July 1, 1957).

12. Order for Transmittal of Original Exhibits (filed July 2, 1957).

XII.

Said picketing and threats of picketing were intended to prevent the SS "Nikolos" from receiving assistance in proceeding from anchorage to a berth and from being granted a berth for the discharge of its cargo.

XIII.

The picketing by the defendants Marine Cooks & Stewards, AFL, James O. Willoughby, Virgil Rogers and Willard Richards, and their threats to continue the same constitute acts of unlawful interference with international commerce and particularly the right of plaintiffs to carry out an international voyage and maritime contract of affreightment with a vessel lawfully registered by a friendly foreign nation manned by an alien crew under foreign shipping articles.

XIV.

As a result of said picketing and threat of picketing tenders of the ship by plaintiffs to Hooker Electrochemical Company were refused and the vessel was unable to obtain moorage at the discharging dock. That as a further result of said picketing and threats of picketing a tug requested by plaintiffs to assist the vessel from anchorage to dock refused to do so.

XV.

That as a result of the foregoing plaintiffs' vessel has been idle since June 10, 1957 and plaintiffs have thereby sustained substantial actual damages.

XVI.

Plaintiffs or some of them have entered into and are seeking other contracts of affreightment covering the carriage of like cargoes from Mexican ports to United States ports in the Puget Sound area and to Hooker Electrochemical dock in Tacoma aboard the SS "Nikolos" and/or other similarly registered and manner vessels, owned, operated or chartered by plaintiffs, or some of them.

XVII.

That by reason of the activities of the defendants Marine Cooks & Stewards, AFL, James O. Willoughby, Virgil Rogers and Willard Richards plaintiffs have suffered additional damage in that the SS "Nikolos" has acquired the reputation of a "hot ship" and plaintiffs' reputations for carrying out their contract obligations have been impaired, which damage is irreparable and incapable of computation.

XVIII.

That the United States as a nation has international obligations with respect to commerce and with respect to the relations of this country with friendly maritime nations and the acts of defendants might impair such obligations and cause irreparable damage to such relations.

XIX.

Defendants will continue to picket said vessel and to threaten to picket the same and other vessels of the plaintiffs similarly engaged as specified in Find-

13. Plaintiffs' Designation of Additional Portion of Record on Appeal (filed July 6, 1957).

14. Reporter's Supplemental Transcript of Proceedings, in which is contained Court's Oral Decision (requested by Item 11 of defendants' Designation, and also Items 3 and 4 requested by Plaintiffs' Designation).

I further certify that as a part of the Record on Appeal I am transmitting herewith the following original exhibits which were admitted in evidence in the above entitled cause, to wit:

Plaintiffs' Exhibits, Nos. 1, 2 and 3.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office on behalf of the parties hereto for the preparation of the Record on Appeal in this cause, to wit: Notice of Appeal (defendants) $5.00, and that the said fee has been paid to the Clerk by the said defendants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Tacoma, Washington, this 12th day of July, 1957.

[Seal] MILLARD P. THOMAS,
Clerk,

/s/ By E. E. REDMAYNE,
Deputy.

ing XVI above unless restrained and enjoined from so doing; and plaintiffs will continue to sustain substantial financial damage if such picketing and threats of picketing are continued, much of which damage and injury to plaintiffs will be irreparable.

XX.

Greater injury will be inflicted upon plaintiffs by the denial of an injunction against the unlawful picketing and threats of picketing by defendants than will be inflicted upon defendants by the granting of such relief.

XXI

Plaintiffs have no adequate remedy at law.

XXII.

Public officers charged with the duty to protect plaintiffs' property are unable to furnish adequate protection, as shown by the lack of evidence of any action by such authorities. No public officer, federal, state or local is charged with the responsibility or in fact authorized to protect the SS "Nikolos" from the activity of the vessel "Will-O-Bee" in circling around and operating near the SS "Nikolos" while at anchorage.

XXIII.

There has been no fraud, or physical violence to persons or tangible property or threats thereof by defendants, or any of them.

XXIV.

As a result of the engagement in this trade by the plaintiffs in vessels of foreign registry, vessels of

American registry and operated and manned under contracts with the defendant unions have lost or will lose such business with resultant loss of employment to members of defendant labor organizations.

Whereupon the court makes the following

Conclusions of Law

I.

The court has jurisdiction of the parties and the subject matter in this cause. The court is not deprived of jurisdiction to grant an injunction by the Norris-LaGuardia Act (29 U.S. Code §101 et seq), or by any other statute of the United States.

II.

Both because the term "labor dispute" as used in the Norris-LaGuardia Act does not contemplate a dispute foreign in nature and because the evidence does not otherwise show it, there is no labor dispute between plaintiffs, or any of them, and defendants, or any of them, nor between defendants, or any of them and the officers and members of the crew of the SS "Nikolos", or any of them, nor between plaintiffs, or any of them and any of the officers or members of the crew of said vessel.

III.

Even if there were a labor dispute, defendants would have no right to interfere in the internal economy of a vessel registered under the flag of a friendly foreign power nor to prevent such a vessel from lawfully loading or discharging cargo at ports

of the United States. Defendants picketing and threats of picketing are unlawful interference with foreign commerce.

IV.

Plaintiffs are entitled to an order restraining and enjoining during the pendency of this action the defendants Marine Cooks and Stewards, AFL, James O. Willoughby, Virgil Roberts and Willard Richards, members of the aforesaid defendant voluntary association (and all other persons who are now or may hereafter be engaged by the said defendants or any of them or may be acting with or for them in doing any of the acts and things hereinafter specified) from establishing or maintaining or causing to be established or maintained or in any manner encouraging, aiding or abetting in the operation and use of a picket boat or any other craft or object as an instrumentality of picketing around or near the SS "Nikolos" or any other vessel registered under a foreign flag and manned by an alien crew under foreign articles and either owned, operated or chartered by the plaintiffs or any of them that may arrive hereafter in the Puget Sound area while said vessel or vessels are in waters within the jurisdiction of this court, or to prevent, obstruct or impede the SS "Nikolos" or other such vessels in proceeding to or from any berth in the Port of Tacoma for the purpose of discharging and delivery of cargo; or establishing or maintaining or causing to be established or maintained or in any manner encouraging, aiding or abetting in the establishment or maintenance of pickets or picket lines at or near

any dock or berth at which the SS "Nikolos" or other such foreign flag vessels of the plaintiffs or any of them as referred to hereinabove may be located or at any other place where it is necessary for persons having business with said vessel to pass; or from placing signs or doing any other act or thing tending to prevent plaintiffs from continuing with the voyage of the SS "Nikolos", or other such vessels of the plaintiffs or any of them as referred to hereinabove.

V.

An injunction bond in the amount of $5,000.00 shall be filed by plaintiffs.

Done in Open Court at Tacoma, Washington, this 19th day of June, 1957 at 3 o'clock P.M.

/s/ GEO. H. BOLDT,
United States District Judge.

Approved as to form:

/s/ DUANE VANCE,
Of Attorneys for Defendants, Marine Cooks and Stewards, AFL-CIO, James O. Willoughby, Virgil Rogers, and Willard Richards.

Presented by:

/s/ CHARLES B. HOWARD,
Of Attorneys for Plaintiffs.

[Endorsed]: Filed June 19, 1957.

In The United States District Court, Western District of Washington, Southern Division

Civil No. 2168

PANAMA STEAMSHIP CO., LTD., a corporation, SEATANKERS, INC., a corporation, and SOCRATES PALEOCRASSAS, an individual, Plaintiffs,

vs.

MARINE COOKS & STEWARDS, AFL, a voluntary association, et al., Defendants.

TEMPORARY INJUNCTION

This matter having come on for hearing before the undersigned Judge of the above entitled court at Tacoma, Washington on June 15 and continuing on June 17, 1957 upon an order to show cause why a preliminary restraining order or tempofary injunction should not be issued against the defendants as prayed for in the verified complaint on file herein, plaintiffs appearing and being represented by their attorneys Summers, Bucey & Howard, Charles B. Howard and John D. Mosser of counsel, defendants Marine Cooks and Stewards, AFL, a voluntary association and James O. Willoughby, and Virgil Rogers and Williard Richards otherwise designated as John Doe One and John Doe Two respectively, individual members of the above voluntary association appearing and being represented by J. Duane Vance and Ivar Peterson, their

attorneys, the International Organization of Masters, Mates and Pilots, Inc., a corporation, and George J. Decker and Delbert J. Kelley otherwise designated as William Doe One and William Doe Two respectively, individual members of the above corporation, appearing and being represented by their attorneys Levinson and Friedman, Sam Levinson of counsel, the International Brotherhood of Longshoremen, a voluntary association, and L. B. Connell otherwise designated as Joe Doe One, individual member of the above voluntary association appearing and being represented by Jack E. Tanner, their attorney, and the other defendants not having been served and not being before the court; the court having considered the verified complaint, the affidavits filed in support of and opposition thereto, the oral testimony of witnesses produced on behalf of the plaintiffs and the defendants and having heard arguments of counsel and considered the briefs and authorities submitted upon behalf of plaintiffs and defendants and having heretofore orally announced its decision and made and entered its findings of fact and conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that defendants Marine Cooks and Stewards, AFL, James O. Willoughby, Virgil Roberts and Willard Richards, members of the aforesaid defendant voluntary association and all other persons who are now or may hereafter be engaged by the said defendants or any of them or may be acting with or for them in doing any of the acts and things hereby

enjoined, be and they are hereby restrained and enjoined during the pendency of this action from:

1. Establishing or maintaining or causing to be established or maintained or in any manner encouraging, aiding or abetting in the operation and use of a picket boat or any other craft or object as an instrumentality of picketing around or near the SS "Nikolos" or any other vessel registered under a foreign flag and manned by an alien crew and owned, operated or chartered by the plaintiffs or any of them that may arrive hereafter in the Puget Sound area while said vessel or vessels are in waters within the jurisdiction of this court, or to prevent, obstruct or impede the SS "Nikolos" or other such vessels in proceeding to or from any berth in the Port of Tacoma for the purpose of discharging and delivery of cargo; or

2. Establishing or maintaining or causing to be established or maintained or in any manner encouraging, aiding or abetting in the establishment or maintenance of picket or picket lines at or near any dock or berth at which the SS "Nikolos" or other such vessels as referred to in paragraph 1 above may be located or at any other place where it is necessary for persons having business with said vessel to pass; or from placing signs or doing any other act or thing tending to prevent plaintiffs from continuing with the voyage of the SS "Nikolos" or other such vessels as referred to in paragraph 1 above.

It Is Further Ordered that no person other than

the expressly named defendants hereby enjoined shall be affected by this order until served with a certified copy of the same and that a certified copy of this order shall be served by the United States Marshal at the request of plaintiff's counsel upon any person who may now or hereafter during the pendency of this case be engaged in doing any of the acts and things from which they are hereby restrained and enjoined.

Done In Open Court at Tacoma, Washington, this 19th day of June, 1957, at 3 P.M. o'clock.

/s/ GEO. H. BOLDT,
United States District Judge.

Presented by:

/s/ CHARLES B. HOWARD,
Of Attorneys for Plaintiff.

Approved as to form:

/s/ J. DUANE VANCE,
Of Attorneys for Defendants, Marine Cooks & Stewards, AFL-CIO, James O. Willoughby, Virgil Rogers and Willard Richards.

[Endorsed]: Filed June 19, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the defendants, Marine Cooks and Stewards, AFL, a voluntary association, James O. Willoughby, Virgil Rogers and Willard Richards, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the temporary injunction entered in this action June 19, 1957.

VANCE & PETERSON,
Attorneys for Appellants, Marine Cooks and Stewards, AFL, James O. Willoughby, Virgil Rogers and Willard Richards.

Acknowledgment of Service Attached.

[Endorsed]: Filed July 1, 1957.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents: That we, Marine Cooks & Stewards, AFL, a voluntary association, et al., as Principal, and United States Fidelity and Guaranty Company, a corporation of Baltimore, Maryland, authorized to do the business of surety in the State of Washington, as surety, acknowledge ourselves to be jointly indebted to Panama Steamship Co., Ltd., a corporation, et al., appellees in the above entitled cause, in the sum of Two Hundred Fifty and No/100 ($250.00) Dollars, conditioned that, whereas, on the 19th day of June,

1957, in the District Court of the United States for the Western District of Washington, Southern Division, in a suit pending in that court wherein Panama Steamship Co., Ltd., a corporation, et al., was plaintiff, and Marine Cooks & Stewards, AFL, a voluntary association, et al., was defendant, a temporary injunction was entered and the said defendants having filed in the office of the clerk of the said District Court a notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California:

Now, Therefore, the condition of the above obligation is such that if the said Marine Cooks & Stewards, AFL, a voluntary association, et al., shall prosecute its appeal to effect and answer all costs, if the appeal is dismissed or by judgment affirmed, or all such costs as the appellate court may award if the judgment is modified, then the above obligation is void, else to remain in full force and effect.

Sealed with our seals and dated this 27th day of June, 1957.

MARINE COOKS & STEWARDS, AFL,

/s/ By JAMES O. WILLOUGHBY.

[Seal] UNITED STATES FIDELITY AND GUARANTY COMPANY,

/s/ By D. E. ROGERS,
Attorney-in-fact.

Certificate of Authority Attached.

Acknowledgment of Service Attached.

[Endorsed]: Filed July 1, 1957.

[Title of District Court and Cause.]

REQUEST FOR FORTHWITH CERTIFICATION OF THE RECORD TO THE CLERK OF THE COURT OF APPEALS

Come now the defendants, Marine Cooks and Stewards, AFL, a voluntary association, James O. Willoughby, Virgil Rogers and Willard Richards, and having duly filed their notice of appeal herein, together with the usual bond for costs, request that the record herein be forthwith certified to the United States Court of Appeals for the Ninth Circuit in accordance with the provisions of the Act of March 23, 1932, Chapter 90, Section 10 (29 USCA, Section 110).

VANCE & PETERSON,
Attorneys for Named Defendants.

Acknowledgment of Service Attached.

[Endorsed]: Filed July 1, 1957.

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL OF EXHIBITS

Upon the application of counsel for the appealing defendants as shown by his signature hereon it is

Now Therefore, ordered that the Clerk of the Court shall transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit as a part of the record on appeal, the originals of all exhibits herein.

Done this 2nd day of July, 1957.

/s/ GEO. H. BOLDT,
United States District Judge.

Presented by:

/s/ J. DUANE VANCE,
VANCE & PETERSON.

Acknowledgment of Service Attached.

[Endorsed]: Filed July 2, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the above entitled Court, do hereby certify that pursuant to the provisions of Rule 75(o) of the Federal Rules of Civil Procedure as amended, and Subdivision 1 of Rule 10 as amended of the United States Court of Appeals for the Ninth Circuit, I am transmitting herewith such of the original papers, pleadings and exhibits, in the above entitled cause, as are designated by the written Designation of the Contents of the Record on Appeal of the defendants above named, and the Designation of Additional Portion of the Record of plaintiffs above named, and the said papers, pleadings and exhibits herewith transmitted constitute the Record on Appeal from that certain Temporary Injunction of the above entitled Court, filed and entered on June 19, 1957, to the United States Court of Appeals for the Ninth Circuit at

[Title of District Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

Taken in the above-entitled and numbered cause in the above-entitled court before the Honorable George H. Boldt, United States District Judge, on Saturday, June 15, 1957, at the United States Courthouse, Tacoma, Washington.

Appearances: On behalf of the Plaintiffs: Mr. Charles B. Howard, Summers, Bucey & Howard, Attorneys at Law, 840 Central Building, Seattle, Washington. Mr. John D. Mosser, Wood, Matthiessen, Wood & Tatum, Attorneys at Law, 1310 Yeon Building, Portland, Oregon.

On behalf of the Defendant Marine Cooks & Stewards, AFL, and Defendant James O. Willoughby: Mr. J. Duane Vance, and Mr. Peterson, Vance and Peterson, Attorneys at Law, 230 Sixth Avenue North, Seattle, Washington. [2]*

On behalf of the Defendant International Organization of Masters, Mates, & Pilots, Inc.: Mr. Samuel Levinson, Levinson & Friedman, Attorneys at Law, Northern Life Tower, Seattle, Washington.

On behalf of the Defendant International Longshoremen's & Warehousemen's Union, Local 19: Mr. Philip J. Poth, Attorney at Law, 4th & Pike Building, Seattle, Washington.

On behalf of the Defendant International Brotherhood of Longshoremen: Mr. Jack E. Tanner, At-

* Page numbers appearing at bottom of page of Reporter's Original Transcript of Record.

torney at Law, Puget Sound Bank Building, Tacoma, Washington. [3]

Proceedings

The Court: Good morning, gentlemen. Panama Steamship Company vs. Marine Cooks and Stewards, and others.

Mr. Howard: May it please the court, appearing on behalf of the plaintiffs named in the complaint, we are this morning asking your Honor to consider the issuance of a preliminary restraining order against the defendants in civil cause No. 2168.

Mr. Levinson: I think, your Honor, it would be of some assistance if we have the appearances.

The Court: I think it would be very desirable.

Mr. Howard: I have been informed by the United States Marshals at Seattle and at Tacoma in this Western District of Washington that before 5 o'clock yesterday afternoon copies of the Summons, Complaint, and the Order to Show Cause were served on the following persons——

The Court: After you name each one, then, perhaps if counsel appearing for that defendant will speak up and identify himself.

Mr. Howard: At Tacoma service was made on [4] Mr. Rogers and a Mr. Willard Richards, identifying themselves as members of the Marine Cooks and Stewards, AFL, and upon Mr. J. O. Willoughby who is identified in the complaint by that name as being Business Agent Representative——

The Court: They are represented by Mr. Vance

and Mr. Peterson of Vance and Peterson, is that correct?

Mr. Vance: That is correct, the organization and Mr. Willoughby whom we concede to be a Seattle agent, and if these two men—individual men who were served are members of that organization, then, we will represent them. I am not in a position—I can ask Mr. Willoughby—they are both members?

Mr. Willoughby: Yes.

Mr. Vance: I will be appearing for both of those individuals.

The Court: Thank you.

Mr. Howard: Also at Tacoma a Mr. L. B. Connell was served as a John Doe member of the International Brotherhood of Longshoremen. He is identified, according to the directories, as the Secretary of that organization here in Tacoma. [5]

Mr. Tanner: Your Honor, my name is Jack E. Tanner representing the International Brotherhood of Longshoremen located in Tacoma.

The Court: Thank you.

Mr. Howard: At Seattle a Captain George Decker and Captain D. J. Kelly, members of the International Organization of Masters, Pilots, Incorporated, a corporation, were served as William Doe One and William Doe Two.

Mr. Levinson: Levinson of Levinson and Friedman appears for the International Organization of Pilots or the two individuals served.

The Court: Thank you.

Mr. Howard: Also at Seattle a Mr. William Gettings as a member of the International Long-

shoremen and Warehousemen's Union, he being identified as Regional Director of that organization.

Mr. Poth: Your Honor, my name is Philip J. Poth, attorney, and I wish to especially appear for International Longshoremen and Warehousemen's Union, Local 19. Mr. William Gettings has no connection whatsoever with Local 19. Local 19 is a separate independent body which has its own offices, president and secretary, and [6] is affiliated only to the International Longshoremen's and Warehousemen's Union. Mr. Gettings happens to be the Representative of the International. He does not represent Local 19, so it is our position that Local 19 is not and has not been properly served.

Mr. Howard: Those are the services that were made before 5 o'clock yesterday afternoon as reported to me by the Marshal who indicated that their men would stand by in the event formal proof was necessary of that service before they had an opportunity to file their formal returns.

The Court: Are there any other parties now appearing in any capacity?

(No response.)

The Court: Very well. Proceed.

(Thereupon opening statements of counsel were rendered.)

Mr. Howard: I would like to call as my first witness a Mr. Boersig. [7]

Mr. Howard: May it please the Court, I believe that counsel for the plaintiffs and counsel for the defendants are prepared to stipulate in open court that with the Court's approval, it may be under-

stood that if the witnesses Schultze, Swenson, and Paleocrassas were called, they would give testimony as set forth in their affidavits, reserving to the defendants the right of cross examination and the right of plaintiffs to any further examination of those witnesses.

Mr. Levinson: We will so stipulate.

Mr. Vance: I want to ask one question, are the gentlemen named present in court?

Mr. Howard: Those three gentlemen are present, and I will make arrangements to have them remain in attendance.

Mr. Vance: As far as the defendants I represent that is agreeable conditioned upon the similar agreement of counsel for the plaintiffs concerning the affidavits and statements there of James O. Willoughby, defendant.

Mr. Howard: He is in court and will remain, otherwise agreed.

Mr. Vance: He is in court.

The Court: It is so agreed that I may deem the testimony given by Willoughby, Schultze, Swenson, and [7a] Paleocrassas as stated in their affidavits, is that correct?

Mr. Levinson: Yes.

Mr. Howard: For the purpose of this application.

The Court: For the purrpose of this particular proceedings. [7b]

HARRY BOERSIG

called as a witness on behalf of the plaintiffs, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your full name and spell your last name.

The Witness: My name is Harry Boersig, B-o-e-r-s-i-g. I am engaged in commercial photography.

Direct Examination

Q. (By Mr. Howard): What is your occupation?

A. Photographer, commercial photographer.

Q. Did you on June 13, 1957, take some pictures of vessels in Tacoma Harbor? A. I did.

Q. And at whose request were those pictures taken?

A. Mr. Carl Swenson from the J. T. Stevedore Company.

Q. And what subject matter were the pictures taken of?

A. Of a vessel lying at the mouth of the Hylebos Waterway and the picket boat supposed to have been out.

Q. What time of day were they taken?

A. It was in the afternoon. I would say it was around 5 o'clock, somewhere in the neighborhood of that.

Q. What means did you proceed to take the pictures? [8] A. From an airplane.

The Clerk: Plaintiffs' Exhibits 1 and 2 have been marked for identification.

(Testimony of Harry Boersig.)

Q. (By Mr. Howard): I will hand you Plaintiffs' Exhibits 1 and 2 for identification. Will you state what those are?

A. These are the pictures I took the day mentioned.

Q. Did you subsequently develop those?

A. Yes.

Q. And can you identify the vessels that are involved in the pictures, or either one of them?

A. The name is very faint on the large vessel. The name is almost obliterated. I don't exactly know what the name is.

Q. Could you see the name of the vessel before you took the picture? A. No.

Q. Can you make out the name on the picture?

Mr. Vance: Let's take a look at them and we will stipulate. The defendants I represent will stipulate that as far as Plaintiffs' Exhibit 1 is concerned, that it is the S. S. Nikolas, and the smaller boat in the lower right hand corner is the Will-O-Bee, the boat belonging to Mr. Willoughby, the defendant, and referred to in [9] this action. As to Plaintiffs' Exhibit 2, that appears to be the S. S. Nikolas. We are unable to identify the small boat in the foreground. It may or may not be the Will-O-Bee. We have no objection to the exhibits.

The Court: Exhibits 1 and 2 are admitted in evidence.

Mr. Howard: I offer them.

(Thereupon Plaintiffs' Exhibits 1 and 2 for identification were received into evidence.)

Mr. Howard: That is all I have of this witness.

Mr. Vance: No questions.

Mr. Levinson: No question.

JAMES O. WILLOUGHBY

one of the defendants herein, called as a witness on behalf of the plaintiffs, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your full name and spell your last name.

The Witness: James O. Willoughby, W-i-l-l-o-u-g-h-b-y. [10]

Direct Examination

Q. (By Mr. Howard): What is your address, Mr. Willoughby?

A. Do you want my business address?

Q. I would like your residence address.

A. 19812 Fourth Avenue, Seattle 88, Washington.

Q. 19812 Fourth South? A. Yes.

Q. What is your occupation?

A. I am Port Agent of the Marine Cooks and Stewards.

Q. Where do you maintain your office?

A. 2505 First Avenue in Seattle, Washington.

Q. When did you first become interested in the activities of the steamer Nikolas?

A. Upon hearing that she was put in to Seattle—some couple weeks ago that she was to put in to Seattle with a load of salt for Hooker Chemical.

The Court: Do you mean at Tacoma?

(Testimony of James O. Willoughby.)

The Witness: Yes, I mean Tacoma.

Q. (By Mr. Howard): From whom did you first receive notification of the expected arrival of the Nikolas?

A. I don't believe I could properly answer that. I can't remember exactly who I learned this from, whether it was the intelligence—Marine Intelligence, or whether it was by word of mouth, from someone. [11]

Q. Do you know when the Nikolas arrived at the Port of Tacoma, Washington?

A. Not the hour. I could tell you approximately.

Q. Would it have been on June 10, 1957, last Monday?

A. Sometime during the late P.M. or early A.M. hours of Sunday and Monday.

Q. I will ask you, Mr. Willoughby, if you are the owner of the small boat designated the "Will-O-Bee" which appears in Plaintiffs' Exhibit No. 1?

A. That is registered in my name.

Q. Now, when was that boat brought to Tacoma?

A. I arrived in Tacoma Harbor about 5:30 A.M. on Monday.

Q. And were you aboard the Will-O-Bee then?

A. Yes.

Q. Who else was aboard with you—strike that question. Were there some other members of the union?

A. There was another member. I can't bring it to mind who it was that was with me that morning.

(Testimony of James O. Willoughby.)

Q. Some other member of the Marine Cooks and Stewards Union? A. Yes.

Q. What activities did the Will-O-Bee—the cruiser Will-O-Bee engage in after arrival at the Port of Tacoma?

A. We approached the proximity of the Nikolas, circled her once, came alongside, and I was invited aboard by the Master—the Mate of the vessel. [12]

Q. At that time did the cruiser Will-O-Bee have displayed on it the sign such as appears in Plaintiffs' Exhibit No. 1, "Picket Boat?" A. It did.

Q. And were those signs continued to be displayed aboard the Will-O-Bee between June 10 and June 14, Friday? A. I would say periodically.

Q. And did the cruiser—where did the cruiser Will-O-Bee remain, in and about the steamer Nikolas between June 10 and June 14?

A. Spasmodically.

Q. Where did it go when it left there?

A. We would go up—I don't know whether you would call it a canal or a waterway there.

Q. The Hylebos Waterway?

A. I don't know the name of it.

Q. Where did the ship tie up when it went up the waterway?

A. We tied to some floating—you could call it a float made out of logs and so forth.

Q. At what logs?

A. That was at the corner—approximately at the corner of Hooker Chemical and the Navy Yard.

Q. Is it not a fact that that float was adjacent

(Testimony of James O. Willoughby.)

to the property of the Hoker Electro-Chemical Company? A. It probably was. [13]

Q. Did you at any time have an occasion to be on the premises of the Hooker Electro-Chemical Company between June 10 and June 14?

A. Oh, yes.

Q. Frequently? A. Yes, several times.

Q. And did you pass through that plant to and from the cabin cruiser Will-O-Bee? A. Yes.

Q. Now, were there subsequently additional signs placed aboard the picket boat Will-O-Bee?

A. On Friday, I believe it was, Friday morning we had a smaller sign that we threw over the side.

Q. What did that sign state?

A. "AFL-CIO seamen protest. Loss of their livelihood to foreign flagships with substandard wages or substandard conditions."

Q. And that sign was displayed on the picket boat on Friday, June 14?

A. About that time.

Q. Where is the cruiser Will-O-Bee now?

A. Somewhere in the area of the State of Washington. I really couldn't tell you now.

Q. At any time prior to the arrival——

The Court: Western or eastern? [14]

The Witness: That is western, sir. The waters of the State of Washington I should have said.

Q. (By Mr. Howard): At any time prior to the arrival of the steamer Nikolas on June 10, did you

(Testimony of James O. Willoughby.)

have any occasion to talk with a Mr. Carl Swenson of the J. T. Stevedore Company?

A. Prior to the arrival?

Q. Prior to the arrival of the steamer on June 10. A. Yes.

Q. Do you recall about when that was?

A. In the week prior to her arrival on Sunday.

Q. What was the nature of that conversation?

A. I was asking for information about the vessel, what her status was, what the conditions was, what the flagship—what flagship she belonged to, and so forth.

Q. Did you on any occasion prior to the arrival of the Nikolas have any discussion with Mr. Swenson as to the purpose of your calls and what you intended to do?

A. Well, I told him that by virtue of the policy of my union that I was interested in the wages, hours, and conditions existing aboard the ship.

Q. That was prior to its arrival?

A. Yes, I believe it was.

Q. Now, have you talked to Mr. Swenson subsequent to the [15] arrival of the vessel?

A. Possibly I have in answer to his questions or something like that.

Q. At any time prior to June 14—correction—at any time prior to June 10 did you notify Mr. Swenson that efforts would be made to establish a picket boat or a picket line around the steamer Nikolas?

(Testimony of James O. Willoughby.)

A. I could have. I don't remember, but I could have.

Q. Now, did you prior to June 10 have any occasion to talk with a Mr. Gentes of the Hooker Electro Chemical Company? A. Yes.

Q. Concerning the Nikolas? A. That's right.

Q. And when would those conversations have taken place?

A. I couldn't specify the time I talked to him, several different times during the week.

Q. That would be the week prior to the arrival of the vessel, is that right?

A. No. That would be the week after the arrival of the vessel.

Q. Did you talk to Mr. Gentes before the Nikolas arrived in Tacoma Harbor?

A. Not to my memory, unless it was by phone and I didn't know who he was.

Q. I will ask you if you made some request from Mr. Gentes [16] of the Hooker Electro Chemical Company for permission to have members of your union on the plant or around the facilities of Hooker Electro Chemical Company?

A. I didn't exactly make a request. I believe I was invited to use any facilities, telephone, or otherwise, that I needed to while I was there.

Q. As a matter of fact, you have maintained representatives of your union at the Hooker Electro Chemical Company plant during the past week, have you not?

A. They have been aboard the cruiser. If you

(Testimony of James O. Willoughby.)

want to call it at the plant being tied alongside this float and they pass through there going to and from it, yes.

Q. Have you also had representatives of the Marine Cooks and Stewards, AFL, in the parking lot of the Hooker Electro Chemical Company?

A. Their cars have been in the parking lot.

Q. And the men themselves have been there?

A. Going to and from.

Q. Have you had any occasion, Mr. Willoughby, to communicate with representatives of the Inland Boatmen's Union concerning the Nikolas?

A. No. I have tried. I have tried to contact them several times but I never was able to do so as I was over here most of the time.

Q. Have you had any occasion to contact representatives [17] of the International Brotherhood of Longshoremen concerning the Nikolas?

A. I have talked to a number of them.

Q. Who have you talked to?

A. I really couldn't identify them except to know them by sight.

Q. Persons here in Tacoma?

A. In Tacoma. They must live in Tacoma. I just take it supposedly that they live in Tacoma.

Q. Have you enlisted their support and cooperation in connection with the activities that you have been engaged in? A. No.

Q. You have not done so? A. No.

Q. Have you notified them?

A. They were notified.

(Testimony of James O. Willoughby.)

Q. They were advised of those activities?

A. They were advised by a group of people who came down from Seattle not to my knowledge, that put themselves out in front and told them when they came to work that they had picket signs on them and protest signs.

Q. Who were these people from Seattle that you are referring to?

A. They were different seamen from different unions. [18]

Q. What unions did they represent?

A. I don't know. I don't know.

Q. Were they representatives of the Sailors' Union of the Pacific?

A. They could have been. I don't know their names and didn't know except, as I say, by sight. I don't know who they were.

Q. Have you at any time communicated with any members of the Sailors' Union of the Pacific regarding the activities that you are conducting in connection with the arrival of the S. S. Nikolas?

Mr. Vance: If the Court please, in order—I think for the purposes of this proceeding that is here on a temporary injunction, where Mr. Willoughby and by myself in the absence of Mr. Willoughby and his organization, Marine Cooks and Stewards, have admitted that they caused this picket boat to be placed out there and maintained it there, that I do think it is irrelevant and immaterial for counsel to go into conversations with de-

(Testimony of James O. Willoughby.)

fendants not yet served, if any, as to some which would——

The Court: I think not, Mr. Vance. I think it is material. Overruled.

Mr. Vance: I said that for two reasons, [19] one, he apparently is going to go into admissions against interest here in a court proceedings taking oral testimony against people who are not represented by counsel and have no right or opportunity to make the proper record, your Honor. Excuse me for interrupting.

I am thinking along these lines, your Honor, if they are charging a conspiracy, there is that constant line of objection that for the preservation of a record must be made where certain comments are not admissible as against one or the other of the parties in a lawsuit, and I hate to see this record burdened with things——

The Court: I don't want to see it burdened with anything that isn't germane to the issue, not on a special hearing of this kind and for the very narrow and limited purpose we have here, but I do think a reasonable inquiry into the matters you have just approached is a matter that will have bearing on this narrow issue.

Mr. Howard: I confess I lost track of the last union I directed a question to.

Mr. Levinson: Sailors' Union of the Pacific.

The Court: Yes, I think that was it.

Mr. Levinson: I don't think the question was answered. [20]

(Testimony of James O. Willoughby.)

The Court: I don't believe it was. I think I headed Mr. Willoughby off from answering the question. In substance I think the question was, have you contacted representatives of the Sailors' Union of the Pacific with respect of the Nikolas?

The Witness: No. The only contact I have with the Sailors' Union of the Pacific, we are housed in the same building and through necessity must talk to people who are right in my vicinity all the time. Is there any objection? I mean is counsel trying to establish that he objects to me talking to people within my own building?

Mr. Vance: Don't argue.

The Court: All you have to do is answer the question, Mr. Willoughby, and that is all.

The Witness: I would have to say in regards to the Nikolas, no, I haven't talked to anybody in regards to the Nikolas.

Q. (By Mr. Howard): Have you advised those persons in the Sailors' Union of the Pacific of your activities in establishing a picket boat around the S. S. Nikolas? A. No.

Q. Now, as to the International Longshoremen and Warehousemen's Union, have you advised their representatives or members? [21]

A. I have not.

Q. Have you spoken with representatives of any labor organization with offices and members in the Northwest here concerning the Nikolas?

A. No.

Q. You have not? A. No.

(Testimony of James O. Willoughby.)

Q. Incidentally, Mr. Willoughby, has the cruiser Will-O-Bee remained in the vicinity of the Nikolas or the waterway here at Tacoma Harbor 24 hours a day since its arrival on June 10?

A. Well, it was tied up—do you mean was we circling?

Q. I don't mean constantly circling, but remaining in the vicinity of the vessel or in the water.

A. No. We were tied up out of sight of the Nikolas in fact.

Q. That is down at the Hooker Electro Chemical Company? A. Yes.

Q. Which is in the waterway? A. Yes.

Q. And you have remained at one location or another 24 hours a day? A. Yes.

Q. Since the ship arrived on the morning of June 10? A. Not up until now, no.

Q. Until at least yesterday noon? [22]

A. Yes.

Q. Do you know, Mr. Willoughby, whether there are any members of the Marine Cooks and Stewards, AFL, among the crew members on the steamer Nikolas? A. I couldn't answer that.

Q. If there were some you would have a record of it, would you not? A. Not necessarily.

Q. Do you know whether there are any U. S. citizens aboard the steamer Nikolas?

A. No. I have had no conversation with them except the captain.

Q. Have there been any members of any other labor organizations aboard the cruiser Will-O-Bee,

(Testimony of James O. Willoughby.)

to your knowledge, other than members of the Marine Cooks and Stewards Union?

Mr. Vance: Do you mean in this dispute?

Q. (By Mr. Howard): During the period June 10 to June 14.

A. Not to my knowledge that I can remember.

Mr. Howard: That is all I have.

Mr. Vance: No questions.

The Court: Is there anyone else who wishes to interrogate this witness?

Mr. Levinson: Just one other question. [23]

Cross Examination

Q. (By Mr. Levinson): Are there members of your Marine Cooks and Stewards Union who are not American citizens? A. Pardon?

Q. Do you have members of your union who are not American citizens? A. Oh, yes, certainly.

Mr. Levinson: That is all. No further questions.

The Court: That is all, Mr. Willoughby.

(Witness excused.)

SOCRATES PALEOCRASSAS

one of the plaintiffs, called as a witness on his own behalf; being first duly sworn, was examined and testified as follows:

The Clerk: Please state your full name and spell your last name.

The Wtiness: Socrates. That is the intial name, you see.

The Clerk: Your last name, please.

The Witness: Paleocrassas, P-a-l-e-o-c-r-a-s-s-a-s.

Mr. Howard: May I have this book marked?

The Clerk: Plaintiffs' Exhibit No. 3 has been marked for identification.

Mr. Howard: If the Court please, this is the first of the witnesses to whom the stipulation would apply. They are already identified in the affidavits.

The Court: There is no need of covering the same ground which is in the affidavit.

Direct Examination

Q. (By Mr. Howard): Captain, handing you what has been marked for identification as Plaintiffs' Exhibit 3, will you state what that is?

A. This is on the Greek ships an agreement regarding the Greek seamen. Every four years we renew that. We expect another one this year, 1957. This is on the basis of what we pay the crew, but we pay more than that.

Mr. Levinson: Objected to as not responsive.

Q. (By Mr. Howard): Captain, are members of your crew on your vessel members of the unions

(Testimony of Socrates Paleocrassas.)

in Greece which are parties to this collective agreement? A. Yes.

Mr. Howard: I offer this in evidence with this suggestion, if the Court please, that this [25] is the Master's only copy. I have photostats of the pertinent pages which will be made available for substitution.

The Court: Go ahead with something.

Mr. Vance: Is this supposed to be an English translation here?

Mr. Howard: On one side of the page it is written in Greek and the other side is in English.

Q. (By Mr. Howard): That is a translation, is that correct? A. Yes, that is quite correct.

Mr. Vance: I have some voir dire on this, if the Court please.

The Court: Go ahead with it.

Examination On Voir Dire

Q. (By Mr. Vance): Mr.—is it Paleocrassas?

A. Yes.

Q. You are a native of Greece?

A. Yes, sir.

Q. And Master of the vessel the S. S. Nikolas?

A. Yes.

Q. Employed by what company?

A. Panama Steamship Company. [26]

Q. For what?

Mr. Howard: Panama.

Q. (By Mr. Vance): Panama? A. Yes.

Q. That company is incorporated where, sir?

(Testimony of Socrates Paleocrassas.)

A. In London. That is Monrovia.

Q. I am not a world traveler. Where is Monrovia? Is that part of the British Empire?

A. Monrovia is in the Liberian district.

Mr. Howard: Would it be Liberia?

The Witness: Yes, the west coast of Africa.

Q. (By Mr. Vance): What?

The Court: Monrovia is the capital of the nation Liberia.

Mr. Vance: Thank you, your Honor, I didn't know that.

Q. (By Mr. Vance): Is that part of the British Empire, Liberia?

A. Liberia is no part. It is independent.

Q. Who owns the vessel?

A. Panama Steamship Company.

Q. They own it? A. Yes.

Q. And they are the people you work for?

A. They work in London. Their offices are in London. [27]

The Court: He said they are the people that you work for. I don't think you heard the question.

Q. (By Mr. Vance): Do you work for Panama Steamship Company?

A. Yes, but the owners are Greek.

Q. Are you paid by the Panama Steamship Company? A. Yes.

Q. You are paid by them?

A. Yes, by them, by the Greeks—by our owners who put up the flag.

Q. You are paid by the Greeks?

(Testimony of Socrates Paleocrassas.)

A. Yes, we are Greeks.

Q. Well, I know, but you said that the——

A. Well, that is the title of the company.

Q. Greece?

A. Panama Steamship Company. That is the title of the company I am saying.

Q. Well, I thought you said that was a British corporation? A. No, it is not.

The Court: He didn't say that.

A. It is a Greek.

Q. (By Mr. Vance): It is a Greek corporation?

A. The title—that is the title of the company, the Panama Steamsh Company, but the owners are Greek.

Q. Owned by Greeks? [28] A. Yes.

Q. Greek nationals? A. Yes.

Q. Where is it incorporated?

A. In London.

Q. Well, that is a British corporation, is it not, if it is incorporated in England?

The Court: He is not following you.

Mr. Howard: I don't believe he understands your question.

The Court: When he says where is it incorporated, he means what country—where was the corporation formed, not where the offices are. Do you know what country?

The Witness: Well, Liberia. We have a Liberian flag.

Q. (By Mr. Vance): The vessel is registered under the Liberian flag? A. Yes.

(Testimony of Socrates Paleocrassas.)

Q. But any owner of any country, Captain, even an American.

A. They remain in London.

Q. Pardon?

A. In London. The managers are in London.

The Court: What he wants to know is what company is the corporation incorporated under?

The Witness: What company? Panama Steamship Company. That is the title of the company.

Mr. Howard: If I can expedite this at all, I am not sure that this will solve it. I happen to know that this is a Panamanian corporation. It doubtless would show on the ship's documents.

The Court: Don't let us waste a lot of time with that.

Mr. Vance: I don't think this is a contract, and I object to it. I don't think it has any bearing. It is purported to be signed for the union of Greek owners, and I don't think there is any foundation.

The Court: It may not, but I will admit it for whatever purpose it may have.

(Thereupon Plaintiffs' Exhibit No. 3 for identification was received into evidence.)

Mr. Vance: Furthermore than that, I call your Honor's attention to the fact that it is terminable at will on the part of the employer and without cause on the part of the Master, and, therefore, it is unilateral and no contract at all. It is dated back in 1951. I haven't had time enough to read it all but I have nothing [30] before me which shows that there is any intention that this thing

is still in effect some six years later. There is no showing that the company was a company, a member of the association which signed the agreement. There is no showing that—as a matter of fact, I don't see any signature of any union here as he talks about.

Mr. Howard: May I point that out to you, Mr. Vance?

Mr. Vance: I would appreciate it.

The Court: You can argue the effect of it later. I am going to admit for the limited purpose of this hearing and allow you to substitute photostats.

Mr. Vance: If your Honor please, rather than the excerpts——

The Court: You can have the entire document ultimately photostated if necessary.

Mr. Howard: We have only had part of it photostated. If we may have leave to change that?

The Court: We don't need to tend to that this morning. Go ahead.

Q. (By Mr. Howard): Captain, did you have an occasion to talk with a Mr. James Willoughby, the previous witness? A. Yes, I called him up.

Q. When did he come aboard?

A. I tell you exactly. I invited him on board, and he asked what we wanted and——

The Court: Mr. Paleocrassas, be careful now just to answer the question the man asks. Answer just what he asks. Don't go on to something else.

The Witness: When did he come aboard?

(Testimony of Socrates Paleocrassas.)

Mr. Vance: May we be advised of the nature of the document?

The Witness: 6:30 in the morning.

The Court: What are you looking at, the log?

The Witness: 6:30 in the morning.

Q. (By Mr. Howard): What language is the log written in? A. What?

Q. What language is the log or the log entries written in? A. When he came aboard?

The Court: No, what language are your entries in the book?

The Witness: In Greek.

Mr. Vance: Then, your Honor, I am going to object to his using a Greek document. I can't examine it and cross-examine the witness.

The Court: Overruled. You will have an [32] opportunity to do that if it becomes necessary.

Q. (By Mr. Howard): What was the nature of your discussion with Mr. Willoughby on this occasion on the morning of June 10?

A. Well, I asked him what he wanted.

Q. What did he indicate he wanted?

A. That I was interfering with the coastal trade.

Q. In the coastal trade or the intercoastal trade?

A. That is what he said. His friend, Mr. Swenson, was there too.

Q. Did Mr. Willoughby examine Exhibit 3, this agreement, at the time he was aboard your vessel?

A. No.

Q. Did he obtain from you the names of the

(Testimony of Socrates Paleocrassas.)

Greek unions with which the members of your crew are affiliated?

A. No. He just came on board and told me that the ship I brought——

The Court: Now, wait a minute, just answer the question, Mr. Paleocrassas. We will get along much quicker. Put the question again. Just answer the question and don't mention other things.

Q. (By Mr. Howard): Did Mr. Willoughby obtain from you at that time the name of the Greek unions with which your crew members are affiliated?

A. No.

Mr. Howard: That is all I have.

The Court: Cross-examine.

Mr. Howard: I offer at this time the testimony by affidavit which was given by this witness.

Mr. Vance: I do have one question.

Cross Examination

Q. (By Mr. Vance): Mr. Paleocrassas, you had a cargo of salt aboard the Nikolas at the time?

A. Yes.

Q. And it was picked up on the west coast of Mexico, sir? A. Yes.

Q. Had you gone to Mexico empty, sir?

A. Yes.

Q. Had the Nikolas ever engaged in the business of hauling salt from Mexico to the west coast of North America prior to that time?

A. No, that was the first time.

Mr. Vance: That is all I have.

(Testimony of Socrates Paleocrassas.)

Mr. Poth: I have one question, your Honor.

The Court: Yes, of course, Mr. Poth. [34]

Cross Examination

Q. (By Mr. Poth): Has the vessel been in Seattle recently? A. No.

Q. Has it ever been in to Seattle?

A. No, not that I know of. I have been Captain of the ship three years and I have never been. I don't know if it did when it was under the British flag.

Q. Now, have you any instructions now to proceed to Seattle on any voyage?

A. After this voyage?

Q. Yes. A. No.

Q. You have no contemplation of taking the vessel to Seattle, is that right? A. No.

Mr. Poth: No further questions.

The Court: That is all, Mr. Paleocrassas. You may step down.

(Witness excused.)

Mr. Howard: Call Mr. Swenson.

Mr. Vance: Mr. Howard offered the affidavit I presumed according to the stipulation, of course, and I didn't make the technical motion at the time, but, of course, I wasn't stipulating [35] that the matters contained in the affidavits were true or that the conclusions that are stated in the affidavits were properly drawn.

The Court: I understood that, of course.

Mr. Vance: I thought so, your Honor.

CARL RAYMOND SWENSON

called as a witness on behalf of the Plaintiffs, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your name and spell your last name.

The Witness: Carl Raymond Swenson, S-w-e-n-s-o-n.

Mr. Howard: Your Honor, the stipulation applies to this witness also.

Direct Examination

Q. (By Mr. Howard): Mr. Swenson, when did you first have occasion to talk with Mr. Willoughby about the activities of the steamer Nikolas?

A. I believe is was on June the 6th.

Q. And what was the essence of the conversation at that time? [36]

A. I received a telephone call from him asking if I knew when she would arrive, what flag she was under, and he stated that under the policy of his union if the crew was not affiliated with unions acceptable to them, they would picket the ship.

Q. Prior to this conversation of Mr. Willoughby on June 6 had you received any indication from any source that the Marine Cooks and Stewards Union or other unions were concerned with the activities of the steamer Nikolas?

A. I had received information on, I believe it was Monday, June 3, that there was some indication of labor trouble and——

(Testimony of Carl Raymond Swenson.)

Mr. Vance: I object to hearsay and indications of what he heard.

The Court: Yes. The form of that response is objectionable. That part will be stricken. Go ahead.

Q. (By Mr. Howard): From whom did you receive this word?

A. At approximately noon on June the 3rd, Monday, I received a telephone call from our principals in New York City, the charterers of the vessel.

Q. What did you do thereafter?

A. I immediately went down to the Hooker plant to see if there was any labor trouble. I didn't see any sign of [37] any, and I went in and spoke to their Traffic Manager and inquired from him if there was any.

Q. Prior to the arrival of the steamer Nikolas in Tacoma Harbor on June 10, did you gain information as to the prospect of picketing activities in connection with the steamer Nikolas?

Mr. Levinson: Objected to as leading.

Mr. Vance: I will join that.

The Court: The preliminary question is in a very narrow sense appropriate. Just answer it yes or no. Did you learn something of that kind?

The Witness: May I ask you to repeat the question?

The Court: Rephrase it.

Q. (By Mr. Howard): Before the steamer Nikolas arrived in Tacoma Harbor on the morning of

(Testimony of Carl Raymond Swenson.)

June 10th, had you received any information as to the likelihood of picketing activities? Can you answer that yes or no? A. Yes. Yes.

Q. From what source?

A. From Mr. Willoughby.

Q. From Mr. Willoughby? A. Yes.

Q. Did you receive any similar indications from the Hooker [38] Electro Chemical Company?

Mr. Vance: I object to that as leading and suggestive.

The Court: Yes, it is leading and suggestive. I don't see that it is very material.

Q. (By Mr. Howard): Did you receive any similar information from other sources? A. Yes.

Q. From what source?

A. Hooker Company.

Mr. Vance: I object to what information he received.

The Court: Well, it isn't very important on this narrow issue in any event.

Mr. Vance: I will try not to object.

The Court: I am not irritated about it at all if I seem so. You misinterpreted. Just try and keep it narrowed to the very narrow issue we have on for today.

Mr. Howard: That is all the questions I have, your Honor.

Mr. Vance: No questions.

Mr. Levinson: No questions.

The Court: That is all, Mr. Swenson.

(Witness excused.) [39]

ALVIN E. SCHULTZE

called as a witness on behalf of the Plaintiffs, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your full name and spell your last name.

The Witness: Alvin E. Schultze, S-c-h-u-l-t-z-e.

Mr. Howard: May the record show that the stipulation also applies to the testimony of this witness?

The Court: Yes.

Direct Examination

Q. (By Mr. Howard): Mr. Schultze, does the Seatankers Incorporated or the Trans-Sea Carriers Incorporated have any connection at all with the ownership of this vessel? A. No.

Q. What is the basis of your relationship with the steam Nikolas?

A. Seatankers Incorporated have this vessel under a time charter.

Q. Who is responsible for loading or discharging the vessel and providing harbor services such as pilotage and towage?

A. Seatankers Incorporated. [40]

Q. During the time that you have been in Seattle and after the arrival of the Nikolas on June 10, have you made efforts to obtain those services?

A. Yes.

Q. Have you been able to do so? A. No.

Q. And why not?

A. We were informed by the Foss Tugboat

(Testimony of Alvin E. Schultze.)

Company, the company from whom we ordered a towboat, that——

Mr. Vance: I object to any conversation they had with Foss Tugs.

The Court: If the Court please, this is an application for a preliminary restraining order, which conceivably, if the situation dictated, might even be applied for ex parte without any hearing, and in view of the very nature of the application I submit that it is a little difficult.

The Court: I will allow him to answer keeping in mind that it is possibly objectionable, and we will consider whether it is so after we have heard it. Go ahead.

Q. (By Mr. Howard): What did you learn from Foss?

A. After having ordered towboats to move the Nikolas to the Hooker Chemical plant on Wednesday, June 12, we were later informed about 4:30 p.m. by the Foss Towboat [41] Company that they would be unable to handle the vessel in view of the fact that they had been notified by a Mr. Fox of—I believe what is known as the Inland—representing the Inland Boatmen's Corporation that the vessel was so-called "hot" and that their crews would be unable to handle it.

Mr. Levinson: I move to strike, your Honor, upon the grounds of hearsay.

The Court: It is, of course, hearsay, but go ahead.

Mr. Vance: Double hearsay.

(Testimony of Alvin E. Schultze.)

Q. (By Mr. Howard): Have you since your arrival in Tacoma had any conversations with Mr. Willoughby? A. Yes, I have.

Q. Can you identify that as to time?

A. The first conversation I recall is on Monday, June 10, when I was informed that the information obtained by Mr. Willoughby——

Mr. Levinson: Just a moment——

The Court: Do you mean you were informed by Mr. Willoughby?

The Witness: Yes. That the information obtained from the ship would necessitate him passing that on through to San Francisco, and he would later let us know what the results was. [42]

Q. (By Mr. Howard): Did you subsequently have further conversations with Mr. Willoughby, and if so, when?

A. I did on the following morning.

Q. What was the nature of that conversation?

A. In conversation with the Western Shipping Company who represented the Nikolas for the owners in the United States at New York, we were informed—or I was informed——

Mr. Levinson: Just a moment. Your Honor, I think if is obviously not responsive.

The Court: Yes, it seems not to be.

Q. (By Mr. Howard): My question, Mr. Schultze, was as to the nature of your conversation with Mr. Willoughby on the morning of June 11.

A. I informed Mr. Willoughby that I understood

(Testimony of Alvin E. Schultze.)

that from information obtained from New York that the union affiliation question was cleared up at that end, and I asked him to facilitate having the information passed on to the West Coast and to him in order that the vessel might proceed about her business.

Q. Did you have subsequent conversations with Mr. Willoughby?

A. Later the same day Mr. Willoughby telephoned me and told me that the information that I had at hand apparently was not correct.

Q. Have you had further conversations with Mr. Willoughby [43] after June 11?

A. I don't recall any after June 11.

Q. Have you received any indication from any source that difficulty will be encountered in discharging the cargo from the vessel if it goes to berth at Hooker Electro Chemical?

Mr. Levinson: That is objected to upon the grounds it is leading, and further, it calls for a hearsay statement.

The Court: No, he said had he received it from any source. That is just a yes or no question. Then we will find out where it came from.

The Witness: Yes.

Q. (By Mr. Howard): From what source?

A. In conversation with Mr. Thronsen whom I understand represents the Public Relations Committee——

Mr. Vance: If the Court please, may I have a

(Testimony of Alvin E. Schultze.)

running objection to all hearsay, then I won't object any more.

The Court: I wish you would in order to avoid this type of thing.

Q. (By Mr. Howard): Did you receive information from any other source other than Mr. Thronsen?

A. I received information from Mr. Gettings that Gentes [44] of Hooker Chemical Company——

Q. At any time has it been brought to your attention that there is a threat of an invisible picket line?

Mr. Vance: I object to that as leading and suggestive.

The Court: Well, why don't we get around to where this is supposed to have come from first? Some third-hand rumor to that effect wouldn't be of any value in any case.

Mr. Howard: Well, I am trying to avoid getting into the hearsay question again, if the Court please.

The Court: Why don't you bring out who was supposed to have made some statement of this kind and then we will go from there.

Q. (By Mr. Howard): Has anyone since your arrival at Tacoma indicated to you that there is a threat of an invisible picket line, and if so, whom?

Mr. Levinson: I object to that as leading.

The Court: Overruled. Go ahead.

The Witness: From Mr. Thronsen.

Mr. Levinson: I move to strike it as hearsay.

(Testimony of Alvin E. Schultze.)

The Court: Well, it still seems so to me, but go on.

Q. (By Mr. Howard): Have you made efforts to obtain [45] longshoremen for discharging cargo on this vessel? A. We have.

Q. And on how many occasions?

A. Commencing with Monday, June 10, we placed orders daily.

Q. Have you been able to use those gangs?

A. We have not.

Q. Why not?

A. June 10 and 11 the gangs were not used inasmuch as the vessel was unable to reach the dock.

Q. Have you ordered gangs on subsequent dates?

A. On June 13 a definite order was given for gangs to commence work at 7 p.m. that night on the strength of information—on the strength of advice that the Foss Towboat Company earlier that afternoon would be in position to dock the vessel.

Q. Did the Foss Towboat Company carry out the order given to it for moving the vessel?

A. No, they did not.

Mr. Howard: That is all I have.

Mr. Vance: I have a couple of questions.

Cross Examination

Q. (By Mr. Vance): Mr. Schultze, how long have you been acting as Agent in the Pacific Coast maritime business? [46]

A. I never acted as an agent in Pacific Coast.

(Testimony of Alvin E. Schultze.)

Q. Whatever your relationship or business is, how long have you been in it?

A. 37 years, sir.

Q. And maybe I better then get what your relationship is again?

A. I am Assistant Operating Manager of Seatankers Incorporated, sir.

Q. You are with Seatankers Incorporated?

A. That is right, sir.

Q. And they have some connection with this vessel?

A. Well, we time chartered this vessel from the Nor-Gulf Steamship Company who in turn had chartered the vessel from the Panama Steamship Company.

Q. Seatankers Inc. did what, you chartered it?

A. We chartered the Nikolas.

Q. Yes?

A: From the North Atlantic and Gulf Steamship Company.

Q. From North Atlantic?

A. Who at the time had the vessel time chartered from the owners.

Q. And the owners are?

A. I can only guess at that. I haven't seen the owner's contract in asmuch as our immediafe contract is with the North Atlantic and Gulf Steamship Company. [47]

Q. What is your best guess then? You are in the business. A. I beg your pardon?

Q. Well, you verified the complaint, didn't you?

(Testimony of Alvin E. Schultze.)

A. That's right.

Q. And it says in here that Panama owns it. Does Panama own it?

Mr. Howard: The complaint says Panama "Ltd."

A. Panama.

Q. (By Mr. Vance): Does Panama Steamship Company own this as you verified under oath?

A. Panama Steamship Company.

Q. And Panama Steamship Company, Inc., is a corporation under the laws of what country, if you know? A. I don't know, sir.

Q. Seatankers, Inc. is a corporation organized under the laws of what country? A. Liberia.

Q. Pardon? A. Liberia.

Q. And the Atlantic and Gulf, they are incorporated or organized under the laws of what country? A. I am unable to tell you.

Q. Now, there are a couple of other corporations mentioned here; National Bulk Carriers, Inc. What does that have to do with this? [48]

A. National Bulk Carriers is an American Steamship Company of which Seatankers Incorporated is an affiliate.

Q. Is it a wholly owned or a subsidiary, or what about it?

A. To the best of my knowledge it is wholly owned.

Q. Wholly owned. And National Bulk Carriers, Inc., is an American corporation?

A. It is.

Q. And you are the Assistant Operating Man-

(Testimony of Alvin E. Schultze.)

ager of National Bulk Carriers, Inc., is that correct? A. That is correct, sir.

Q. What—and you work for Seatankers. Now, do you know of any relationship between North Atlantic and Gulf Steamship Company and the National Bulk Carriers, Inc.?

A. There is none to my knowledge.

Q. None?

A. No, other than the time charter owner from whom we time chartered the Nikolas.

Q. You don't know anything about the ownership of the company, whether it is the same?

A. It is not the same.

Q. You mentioned in your affidavit that you had been representing Trans-Sea Carriers, Inc. Who are they?

A. They are also an affiliate of the National Bulk Carriers.

Q. They are an affiliate of National Bulk Carriers? A. Yes. [49]

Q. What relationship do they have?

A. Wholly owned subsidiary.

Q. Wholly owned subsidiary?

A. To the best of my knowledge, yes.

Q. It is organized under the laws of what country?

A. That I don't have knowledge of. I can't give it to you.

Q. Does it have any connection with this vessel as a corporate entity of any kind that you know of?

A. Trans-Sea Carriers have in effect a contract

(Testimony of Alvin E. Schultze.)

of freightment with the Hooker Chemical Company for the transportation and delivery including the discharge of salt from Black Warrier Lagoon, Mexico, to Hooker Chemical Company plants.

Q. Now, I see that Trans-Sea Carriers Inc. has a contract of freightment with Seatankers who has the charter, is that right? A. That is correct.

Q. And they are both wholly owned subsidiaries of National Bulk Carriers?

A. To the best of my knowledge, yes.

Q. And then what did you say again their relationship was—Panama Steamship Company was?

A. Well, I will have to go down through the chain or channel of this thing. Trans-Sea Carriers have a contract [50] for freightment with Hooker Chemical Company to transport and deliver salt to their plants, one of which being at Tacoma. They have the Nikolas under a sub-time charter from the Seatankers Incorporated.

Q. Seatankers Incorporated?

A. Who have chartered the vessel from the North Atlantic and Gulf Steamship Company.

Q. Who in turn?

A. Who had previously already had the vessel under a time charter from Panama Steamship Company.

Q. And the Seatankers Inc. and the Trans-Sea Corporation are both wholly owned subsidiaries of National Bulk Carriers?

A. I said to the best of my knowledge.

(Testimony of Alvin E. Schultze.)

Q. And Panama Steamship Company is a wholly owned subsidiary of National Bulk Carriers?

A. No, it is not. No connection.

Q. I see. Now, the captain is hired by whom?

A. By Panama Steamship Company.

Q. By the Panama Steamship Company?

A. Yes.

Q. That is a Panamanian corporation?

A. I am informed by the captain that it is a corporation incorporated in Liberia.

Q. I am interested, sir, if you know who registered this [51] vessel under the Liberian register, the charter and sub-charter and time charters and sub-time charters or the owner?

A. I can only presume that Panama Steamship Company did.

Q. And they are not the owners, they are the charterers, is that correct?

A. They are the owners to the best of my knowledge.

Q. You presume they did? A. Yes.

Q. And they employed the Master, is that right?

A. According to our information. We have no connection with the company.

Q. Well, you have connection with—you represent National Bulk Carriers and Trans-Sea and somebody else? A. Seatankers.

Q. You represent all these other three. None of your companies pay this captain, is that right?

A. That is correct.

Q. So the captain would have to be paid either

(Testimony of Alvin E. Schultze.)

by the Panama Steamship Company or by National Bulk Carriers?

A. He couldn't be paid by anyone else other than Panama Steamship Company.

Q. All right. And who pays the crew besides the captain?

A. Again, Panama Steamship Company to the best of my knowledge. [52]

Q. Panama Steamship Company?

A. They being the owners, I presume the owners would pay the crew.

Q. Now, are you familiar, sir, with what is known as the—I meant to take this up with Mr. Swenson and I forgot it but maybe you know—do you know what the International Transport Federation is? A. Not intimately, no, sir.

Q. Well, do you know in a general way?

A. Purely by very vague hearsay knowledge up to this point.

Mr. Vance: That is all.

Mr. Levinson: I would like to ask a question.

Cross Examination

Q. (By Mr. Levinson): Mr. Schultze, when you called New York or wherever it was you called in connection with this dispute, you sought to ascertain the nature of the difficulties which are being reflected here, did you not, sir? A. We did.

Q. And those had something to do with the various associations or labor unions that the vessel operated under, did it not? A. It did.

(Testimony of Alvin E. Schultze.)

Q. And you talked to members of some American unions, did you not, when you telephoned New York? A. No, I did not. [53]

Q. That is, your office did and relayed the information to you? A. No.

Mr. Howard: They are objecting to hearsay, your Honor, and, of course, this witness couldn't testify as to who they talked to.

The Court: I will allow a little of it. Go ahead.

Q. (By Mr. Levinson): In your conversations with New York you related you had some questions concerning the union affiliations of this particular vessel, did you not? A. We did.

Q. And did those particular affiliations refer to some association of unions as well?

A. I was informed by Mr. Willoughby that the question of proper union affiliation would be a matter that would have to be decided upon by one Paul Hall who was the Secretary of the Seafarer's International Union in New York, and also one Einar Joe Hanson who he said represented the International Transport Federation in New York, and he gave me to understand it was between those two individuals that a decision would have to be reached by which he would be guided.

Q. And what did you advise Mr. Willoughby as to the [54] decision reached in New York which you were informed?

A. We called the owners, I speak now of the Panama Steamship Company, representatives in the United States, a company known as the West-

(Testimony of Alvin E. Schultze.)

ern Shipping Company in New York City, to determine what they had been able to accomplish in their dealings with either Paul Hall or Einar Joe Hanson. We were informed by the Western Shipping Company that the matter had been cleared at New York.

Q. Now, by that you understood there was some agreement between the Western Shipping Company representing the Panama Steamship Company, that there was some agreement between the Western Shipping Company as such representative, and these two individuals representing the other organization referred to as the "S.I.U." and the International Transport Federation; is that correct?

A. An agreement to the effect that this vessel was cleared as far as union affiliation was concerned.

Q. By "cleared" do you mean there was some meeting of the minds or agreement as to your vessel? A. That is the way I understood it.

Q. And that meeting of the minds or agreement concerned these individuals who represented the—or spoke for the International Transport Federation and the S.I.U.? A. That is correct. [55]

Q. And that the crew in Tacoma on the ship were therefore acting under such agreement, as far as you were informed, by the Western Transport Agency or whatever that firm was?

A. Well, to clarify your reference to "agreement," the only agreement that was involved in this transaction was whether this crew was acceptable

(Testimony of Alvin E. Schultze.)

or whether it wasn't acceptable, and the information received was that it was acceptable.

Q. Well, when you say it was "acceptable," it was acceptable to the standards as set up by the International Transport Federation, or at least you were so advised?

A. I understood it as such, but I am in no way able to say how the two individuals in New York reached that conclusion.

Q. I am not asking you as to the details, I am only asking you as to the ultimate fact. You were advised that these standards had been agreed upon by the individuals in New York and the Western Transport Corporation?

Mr. Howard: I would like to know what standards you are referring to.

Mr. Levinson: I don't know either, but neither does this witness.

Q. (By Mr. Levinson): I want to know if there was an agreement on standards? [56]

A. The information that I got from the Western Shipping company was simply that they had determined on inquiry that this vessel was cleared by the two individuals that I have previously mentioned.

Q. By the term "cleared" do you mean that they agreed—that these two individuals agreed that this vessel could proceed?

A. That's correct.

Q. And that it could proceed under the standards represented by these two individuals, whatever they may be?

(Testimony of Alvin E. Schultze.)

A. I don't know under what circumstances. All I know is they were satisfied with the status of the vessel.

Q. And do you know, then, it was by reason of some agreement with the International Transport Federation and the S.I.U.? Whatever the agreement is, you don't know? A. I don't know.

Q. But there was some agreement when you used the term "cleared"?

A. I can't do any more than repeat that upon inquiry on the part of the owner's agents they were informed that this vessel was cleared.

Q. They received that——

The Court: That was their term for it? That is what they told you?

The Witness: That was their term. [57]

Q. (By Mr. Levinson): That was obtained after discussion with these individuals?

A. That is correct.

Mr. Levinson: That is all.

The Court: That is all, sir.

Mr. Tanner: One question, sir.

The Court: Yes, Mr. Tanner.

Cross Examination

Q. (By Mr. Tanner): Mr. Schultze, calling your attention to longshore gangs that were ordered on June 10, 11, 12, and 13, were these gangs actually ordered on those days, sir?

A. The gangs were actually ordered in hope that before cancellation time matters would be cleared

(Testimony of Alvin E. Schultze.)

so that the vessel could work each of those days, except on the 13th, and that was a definite order, not a speculation order or a pick order. That was a definite order given for two gangs to go to work at 7 o'clock on the night of June 13 on the basis that the towboat company would carry the ship into the dock.

Q. Well, then, June 10, 11, and 12 were speculative orders, is that correct, sir, to make a distinction between definite orders and speculative orders? [58]

A. That would be the 10th and the 11th.

Q. And the gangs on Thursday the 13th were cancelled?

A. I will correct that day. I think that was the day of the 12th that that took place.

Q. In other words, sir, the I.B.L. in Tacoma has never refused you gangs?

A. They haven't refused to send us a gang, but on inquiry we were informed——

Q. They have never refused——

Mr. Howard: I would like to have the rest of the answer.

The Court: Go ahead.

A. (Continuing) ——but on inquiry we were informed if there was a picket line, and I am speaking in particular about the day that——

The Court: Make it plain who you were informed by. You use that term very frequently without telling us who informed you.

A. I was informed by Mr. Hanley of Griffith and Sprague.

(Testimony of Alvin E. Schultze.)

Q. (By Mr. Tanner): He is not a representative of the I.B.L. in Tacoma, is he?

A. He is with Griffith and Sprague Stevedores. I was informed by him when placing this definite order that if there was a picket line it would be very doubtful that their men would cross that line.

Q. But the I.B.L. has never refused you gangs in response to the order?

A. That could best be answered by Mr. Hanley.

Q. I am asking you.

The Court: Answer that directly. Has anybody on behalf of the I.B.L. directly refused to respond to any order for gangs? That is his question.

The Witness: No.

Mr. Tanner: That is all.

Mr. Howard: Just two or three questions.

Redirect Examination

Q. (By Mr. Howard): Mr. Schultze, is there any relationship between the National Bulk Carriers, Seatankers, Incorporated, and Trans-Sea Carriers, Inc., which you stated you represent, and the steamer Nikolas and the Panama Steamship Company, Ltd., other than through the time charter which you have described?

A. None whatsoever.

Q. Have the companies which you represent any further commitment to deliver salt cargoes to the Hooker Electro Chemical Company here at Tacoma? A. They do. [60]

Q. Mr. Schultze, do you have personal knowl-

(Testimony of Alvin E. Schultze.)

edge of any labor agreement between the owner and the Transport—the International Transport Federation or the steamer Nikolas and the International Trade Federation? A. I do not.

Q. In other words, the only information that formed the basis for your telephone calls to New York was what originated with Mr. Willoughby out here in Tacoma? A. Yes, sir.

Mr. Levinson: Objected to as argumentative, I think he answered that.

Mr. Howard: That is all.

Mr. Vance: Just one more question.

Recross Examination

Q. (By Mr. Vance): I want to clear up one thing. Was it your final conclusion that as far as you knew or your best guess would be, that Panama Steamship Company pays the crew?

A. I would only presume that to be the case. The owner usually does.

Q. Well, sometimes there are some of those charters where the charterer pays——

The Court: You don't know anything about it, though, as I understand it. You just merely [61] assume that the owner is paying the crew, but whether they do or not you don't know?

The Witness: No, sir.

The Court: He doesn't know anything about it, Mr. Vance.

Q. (By Mr. Vance): That is, neither one of those two corporations pay?

(Testimony of Alvin E. Schultze.)

A. Neither of them have anything to do with it.

Mr. Vance: That is all.

The Court: That is all, Mr. Schultze.

(Witness excused.)

GEORGE GENTES

called as a witness on behalf of the Plaintiffs, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your full name and spell your last name.

The Witness: George Gentes, G-e-n-t-e-s.

Direct Examination

Q. (By Mr. Howard): Your occupation, sir?

A. I work as manager of the Hooker Chemical Company at Tacoma. [62]

Q. At Tacoma? A. Yes.

Q. Mr. Gentes, have you received any indication or intimation that there would be any labor trouble at your plant if the steamer Nikolas came to berth at your dock? A. Yes, I have.

A. When did that originate?

A. Well, it was by a representative of another steamship company in the area.

Q. And about when did that originate?

A. Two weeks ago today.

Q. Before the arrival of the steamer Nikolas in Tacoma Harbor on June 10 did you have any communication with or from Mr. James Willoughby of the Marine Cooks and Stewards, AFL?

(Testimony of George Gentes.)

A. Yes.

Q. When was that?

A. A week ago yesterday. It would be on a Friday, Friday afternoon.

Q. And what was the nature of that conversation?

A. Mr. Willoughby placed a call for our traffic manager, I believe, and I think I had the call transferred to my office. His specific request initially was as to the arrival of the ship, arrival time of the ship, and, secondly, to request permission to come through our [63] plant in order to establish a picket line at the dock.

Q. To establish a picket line at your dock?

A. Yes.

Q. Hooker Chemical Company? A. Yes.

Q. Was that identified with the steamer Nikolas in any way? A. Yes.

Q. And how?

A. He explained that he had instructions from his international headquarters to picket any ship under a Liberian flag, I believe, and was not affiliated with this I.T.F. I was unfamiliar with it.

Q. Do you have employees at your plant who are members of other labor organizations than the Marine Cooks and Stewards, AFL? A. Yes.

Q. What unions do they belong to?

A. Chemical Workers and the Operating Engineers.

Q. Have you received any indications as to the possibility of refusal to work or a strike shut down

(Testimony of George Gentes.)

of your plant insofar as it would involve the employees who are members of the Chemical Workers or the Operating Engineers unions?

Mr. Vance: If your Honor please, I hate to object to that question, but I don't think it is [64] material to this case. As your Honor has pointed out before we have a very limited scope here.

The Court: It might be.

Mr. Vance: I seem to find it necessary to object to the form of the questions and the materiality and relevancy, hearsay.

The Court: No, I think this particular matter might conceivably be material. At least, I can't see that it is not, and in view of the nature of this type of hearing I will let him answer. Go ahead, Mr. Gentes.

A. Yes. When I was trying to develop the effect on our company's operations I did have a meeting with our union representatives of both unions, and they indicated to me that if this was a bona fide picket authorized picket in front of our plant gates, that they would feel they would have to honor the picket line. In the event the picket line was at the dock they felt that we could maintain plant operations.

Q. Mr. Gentes, in addition to the cargo of bulk salt which we understand is aboard the steamer Nikolas for delivery at your plant, did you have any other vessels scheduled to deliver salt at your plant in the current period? A. Yes.

Q. And the name of the ship? [65]

(Testimony of George Gentes.)

A. Olympic Pioneer.

Q. Was that scheduled to arrive before or after the steamer Nikolas? A. After.

Q. Which would have had priority at the berth?

A. The Nikolas would have priority at the berth had it arrived and been able to come into the dock.

Q. Were you able to provide a berth for the steamer Nikolas after notification of the arrival and tender of the ship was made to you?

A. I felt that under the provisions of our contract that we did not have to provide berth.

Q. And for what reason?

A. The enforcement clause and labor difficulties and trouble, either direct or indirect.

Q. In other words, you apprehended there would be labor difficulties?

A. Yes, very definitely.

Q. Did that include the possibility of a shut down of your plant? A. That is correct.

Q. Due to a picket line being established?

A. That is correct.

Q. Incidentally, can you give us some very quick idea of what would be involved in the event there was a shut [66] down of your plant as far as cost and damage is concerned?

Mr. Levinson: That is objected to as not material. They are not a party to the proceedings.

Mr. Howard: It very definitely is material, your Honor, in the type of relief we are seeking here.

The Court: It is possible that the contract might be liable for that. That is the theory that Judge

(Testimony of George Gentes.)

Fee, you will recall, imposed a very heavy penalty on Montgomery Ward in Portland on that very ground. Overruled.

Mr. Vance: This is on an injunction.

The Court: That may bear upon it. I don't know that it does, but it is possible that it does. That is all I can do now. Overruled. Go ahead. Just briefly, what effect would it have on the plant?

The Witness: We have never shut our plant down, so it is hard to say what the total effect would be. In dollars I wouldn't be able to give any account of that, of course, but it is a very serious problem to shut our plant down and starting it again. We have six hundred some-odd cells which require attendance individually.

Q. (By Mr. Howard): You are unable to even estimate that in dollars? [67]

A. I would hesitate to do so now. We could do it.

The Court: You are operating six hundred cells continuously 24 hours a day with electric currents through them, and so on?

The Witness: Yes.

Mr. Howard: That is all I have.

Mr. Levinson: No questions.

Mr. Vance: No questions.

The Court: I believe that is all, Mr. Gentes. You are excused.

(Witness excused.)

WILLIAM JOHN HAMBLEY

called as a witness on behalf of the Plaintiffs, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your full name and spell your last name.

The Witness: William John Hambley, H-a-m-b-l-e-y.

Direct Examination

Q. (By Mr. Howard): Your occupation, Mr. Hambley?

A. Operating Manager for Griffith and Sprague.

Q. Have you had any connection with the ordering of gangs to discharge cargo of bulk salt from the steamer Nikolas at the Hooker Chemical plant in Tacoma? A. Yes.

Q. Can you state for us when those gangs were ordered and whether they were able to carry out the orders?

A. Well, the first gangs were ordered to call a haul at 10 a.m., Monday, June 10. They had to be cancelled at 10, and they were cancelled at 9:55 and an order placed for two gangs for that night and three for the following morning, Tuesday morning. They were also cancelled out and gangs put on call at 10 a.m. Tuesday.

Q. What was the reason they were cancelled out?

A. Because the ship wasn't at the dock.

Q. And where any gangs ordered subsequent to that time?

A. Then on Tuesday night no gangs were or-

(Testimony of William John Hambley.)

dered, but Wednesday morning three gangs were ordered for 8 a.m.

Q. And were those gangs able to work?

A. No, they were cancelled out and placed on call again at 10 a.m. Wednesday.

Q. And were any further gangs ordered?

A. Then we ordered two gangs for Wednesday at 7 p.m. and three for 8 a.m. Thursday.

Q. And were you able to use those gangs?

A. The two gangs that were ordered for 7 p.m. Thursday night [69] went down to work but didn't go to work on account of pickets and the ship wasn't at the dock.

Q. They did not work on account of pickets?

A. And the ship wasn't at the berth.

Q. Where were those pickets, do you know?

A. No.

Q. Mr. Hambley, have you as the Operating Manager of Griffith and Sprague Steamship Company received any indication as to whether longshoremen and gangs you were ordering would be willing to work the steamer Nikolas?

A. No. I knew that——

Mr. Levinson: Objected as not responsive.

The Court: He said no.

The Witness: If they were ordered to go——

The Court: The question is answered.

Q. (By Mr. Howard): Have you received any indication whether longshoremen ordered on these gangs that you mentioned, or gangs that might be subsequently ordered for the steamer Nikolas,

(Testimony of William John Hambley.)

would cross a picket line if there was one established around the steamer Nikolas?

A. I talked to Mr. Connell of the I.B.L. and told him that we were placing an order for two gangs for 7 p.m. on Wednesday night and if there was a picket line there, would they go through. [70]

Q. What did he say?

A. He said if it was a legitimate line they wouldn't go through.

Mr. Howard: That is all I have.

Cross Examination

Q. (By Mr. Vance): That wasn't any surprise to you either, was it? A. No, sir.

Mr. Vance: That is all.

Mr. Levinson: That is all.

Mr. Poth: I have a couple of questions.

Cross Examination

Q. (By Mr. Poth): Mr. Hambley, you mentioned longshoremen. To what longshoremen were you referring?

A. I.B.L. hauling in Tacoma.

Q. All in Tacoma?

A. Yes. That is the only place they placed any orders.

Q. And to your knowledge, what are the longshoremen in Seattle affiliated with?

A. I.L.W.U.

Q. Is that Local 19? A. Yes, sir. [71]

Q. And to your further knowledge, has the offi-

(Testimony of William John Hambley.)

cer or the membership of Local 19, I.L.W.U., in Seattle been in any way connected with this trouble or dispute? A. Not to my knowledge.

Q. Are you acquainted with William Gettings?

A. Am I acquainted with him?

Q. Yes. A. Yes.

Q. Is he a member or officer of Local 19 of the International Longshoremen's and Warehousemen's Union in Seattle?

A. He is Regional Director. That is all I know.

Q. He is not a member or officer of Local 19?

A. Not elected or appointed by any of the membership.

Q. How is he elected, or how does he get his job?

A. That I couldn't answer.

Mr. Poth: No further questions.

Cross Examination

Q. (By Mr. Tanner): Mr. Hambley, the very nature of longshore work, sir, is to load and unload ships, is that correct? Is that your understanding of it? A. Yes.

Q. I believe in one of your statements in response to [72] counsel's questions you said that on the night of June 12 they did not work on account of pickets, isn't that true, sir, that there was no work provided? A. That was also true.

Q. Has any member or has any representative of the I.B.L. in Tacoma, sir, ever indicated to you that they were ready to do other than abide by their contract with waterfront employers? A. No.

Mr. Tanner: That is all.

The Court: Did you have something, Mr. Levinson?

Mr. Levinson: No, sir.

The Court: That is all.

(Witness excused.)

WEDELL A. BERG

called as a witness on behalf of the Plaintiffs, being first duly sworn, was examined, and testified as follows:

The Clerk: Please state your full name and spell your last name.

The Witness: Wedell A. Berg, B-e-r-g. [73]

Direct Examination

Q. (By Mr. Howard): What is your occupation, Mr. Berg?

A. I am Chief Dispatcher of Foss Launch and Tug Company.

Q. Calling your attention to June 12, 1957, I will ask you if while you were on duty as dispatcher for the Foss Launch and Tug Company in Tacoma you had any request to provide tug service to the steamer Nikolas?

A. Yes. We had orders for moving the steamer Nikolas in at 5 p.m. furnishing tug and line men at the time.

Q. And did you assign a tug to perform that service? A. Yes, we did.

Q. Now, after doing so, Mr. Berg, did you receive any communication from any representative

(Testimony of Wedell A. Berg.)

of any union concerning the movement of the steamer Nikolas?

A. Yes, I received a call from Captain Fox of the Inland Boatmen's Masters, Mates and Pilots stating that it was a hot ship and there was a picket line or a picket boat, on the steamer and for us not to move the steamer in.

Q. Was the tug Bryn Foss able to perform the assignments which had been given to it?

A. We got this call for the tug before the tug Bryn Foss left the dock.

Q. Did the tug Bryn Foss or any other tug perform the [74] assignment of moving the ship into the dock? A. No.

Q. And why not?

A. After we received the call from Captain Fox there was considerable telephone calling going on and it was decided that the ship would be moved to a better anchorage.

Q. Did the person who placed the order for movement of the ship to the dock cancel the order?

A. Yes. It was changed to move to a better anchorage.

Q. Was that in effect, Mr. Berg, a subsequent request to move the ship to a safer anchorage after you were unable to move it into the dock?

A. That is correct.

Q. So that you still had a request to move it into the dock if it was possible to do so? A. Yes.

Mr. Howard: That is all I have.

(Testimony of Wedell A. Berg.)

Cross Examination

Q. (By Mr. Vance): You moved the vessel to safe anchorage with no difficulty, did you not?

A. We did, yes.

Mr. Vance: That is all. [75]

The Court: That is all, Mr. Berg.

(Witness excused.)

Mr. Howard: That concludes the witnesses that will be called by the applicants.

The Court: Do you have any proof?

Mr. Vance: The Defendant James O. Willoughby and the other Defendants for whom I appear will rest on the affidavit of Mr. Willoughby just for the purpose of this proceedings.

The Court: Yes.

Mr. Poth: Your Honor, I would like to move at this time for dismissal. I am preserving, of course, my special appearance.

The Court: Well, there is a serious question about your being served, of course. That is quite apparent. I wouldn't dismiss on that ground. I might consider you not before me, but I wouldn't dismiss the proceedings because presumably the service could be modified. However, it is quite apparent on the face of it there is inadequate service on Mr. Poth's client, at least as far as this proceedings is concerned. Do you agree to that?

Mr. Poth: The proof in no way has implicated us. [76]

The Court: That is true. However, I wouldn't dismiss the action. I merely will consider that you

are not here. That is all. I think we will take a few minutes recess at this time.

(Thereupon a short recess was taken.)

The Court: You may proceed.

Mr. Vance: May it please the Court, I overlooked something and I would like to put on a witness for a couple of short questions.

The Court: Certainly.

Mr. Vance: Call Mr. Willoughby.

JAMES O. WILLOUGHBY

one of the Defendants herein, called as a witness on his own behalf, having been previously sworn, resumed the stand, and testified further as follows:

Direct Examination

Q. (By Mr. Vance): Mr. Willoughby, you are the same Mr. Willoughby that was sworn before?

A. Yes.

Q. When you first went aboard the vessel and talked to the captain did you have any conversation with him about his men? [77]

A. I asked him if his men aboard the ship, the crew and himself, were members of the International Transport Workers.

Q. Do you mean the International Transport Federation?

A. International Transport Federation.

Q. And the International Transport Federation is what?

A. A world-wide organization of maritime workers.

(Testimony of James O. Willoughby.)

Q. And what, if any, agreement is there by organizations connected with the International Transport Federation?

Mr. Howard: I object to that.

Mr. Vance: All right. I will withdraw the question. It is in the affidavit.

Q. (By Mr. Vance): What did he respond?

A. He told me that they were members—in so many words, that they were affiliated with the I.T.F. and showed me the evidence that has been submitted here.

Q. Exhibit 3?

A. That is it. And I copied the names of the unions.

Q. And did you make any efforts to ascertain whether or not the wages paid the members of the crew were in accordance with the prevailing standards in this area? A. I did.

Q. Were they?

A. They were far substandard to the wages paid in this area.

Q. Is your organization a member of the International [78] Trade Federation? A. Yes.

Q. Transport Federation? A. They are.

Mr. Vance: That is all I have.

Cross Examination

Q. (By Mr. Howard): One question. I take it that your ascertainment as to wages is not in accordance with wages paid to similar workers in this

(Testimony of James O. Willoughby.)

area referring to wages paid to Marine Cooks and Stewards?

A. The crew generally is what I am talking about.

Q. And that would not apply, for example, on a Japanese ship, would it?

A. If they were members of the I.T.F. and working in this area, then they would by virtue of the agreement of the I.T.F. bring their wages up while they were working in a certain area.

Q. By the way, do you have a copy of the I.T.F. so-called agreement? A. No, I don't.

Q. Have you ever examined it?

A. Yes, I have examined it on some point when we have our conventions. [79]

Q. As a matter of fact, there is no I.T.F. agreement, is there, Mr. Willoughby?

A. Well, oh, yes, there is. In fact, we had a convention only four months ago in Geneva.

The Court: No, he is talking about an agreement.

Q. (By Mr. Howard): I am asking you if there is an I.T.F. agreement.

A. I don't know. If you want to term it as an agreement if we should apply the word "agreement" to it.

Q. Can you produce an I.T.F. agreement?

A. No, I can t.

Mr. Howard: That is all.

The Court: That is all, Mr. Willoughby.

(Witness excused.)

(Thereupon oral argument of counsel was rendered following which the case was continued to Monday, June 17, 1957.) [80]

(Thereupon at 10 o'clock a.m., Monday, June 17, 1957, the following proceedings were had, to wit):

The Court: Good morning, gentlemen.

Mr. Poth: I have here Mr. Gettings, and I would like to, if possible, put hi mon the stand to establish two short points, one being the failure of service on Local 19 and also the lack of participation by the I.L.W.U. in this dispute.

The Court: I had rather taken that as being sufficiently established without his testimony on Saturday, but if you would like to formally fill the record, you may do so.

BILL GETTINGS

called as a witness on behalf of the Defendant International Longshoremen's & Warehousemen's Union, Local 19, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your full name and spell your last name.

The Witness: Bill Gettings, G-e-t-t-i-n-g-s. [81]

Direct Examination

Q. (By Mr. Poth): Where do you live, sir?

A. 1526½ East Howell, Seattle.

Q. What is your occupation?

A. Northwest Regional Director of International Longshoremen & Warehousemen's Union.

(Testimony of Bill Gettings.)

Q. Are you a member of any particular Local?

A. Local 10 in San Francisco of the International Longshoremen & Warehousemen's Union.

Q. Are you a member or have you been a member, an officer, agent, or representative in any capacity, or have you ever been an officer, agent, or representative in any capacity of Local 19 of the International Longshoremen & Warehousemen's Union? A. No.

Q. What are the functions of your position as International Representative?

A. Well, I represent the International Union in Oregon, Washington, British Columbia, and Alaska, and all administrative matters connected with the International and Local unions.

Q. How is Local 19 constituted?

A. Well, it is in the International Longshoremen's Union who elect their own officers and run their own business [82] as long as it does not conflict with the International Constitution of the International Union.

Q. Has Local 19 always been affiliated with the International Longshoremen and Warehousemen's Union? A. Yes.

Q. Well, was it ever at any time a member of any other international organization?

A. Yes. Before 1957, I believe. I don't know the exact dates, but a change took place. It used to be a Local of the International Longshoremen's Association.

(Testimony of Bill Gettings.)

Q. In other words, it has changed its affiliation from the I.L.A. to the I.L.W.U., is that correct?

A. Yes.

Q. And you are a representative of the I.L.W.U. International? A. Yes.

Q. Now, in regards to this particular dispute, you have since heard about it since last Friday, have you not? A. Yes.

Q. To your knowledge, has there been any participation in any manner whatsoever or any way whatsoever upon the part of International Longshoremen's & Warehousemen's Union, the International, or any of its affiliates or Locals insofar as you know? A. No. [83]

Mr. Poth: No further questions.

Cross Examination

Q. (By Mr. Howard): Does your jurisdiction as an officer or representative of the International include some supervision over Local 19?

A. Not as far as the operation of the Local is concerned. If something should happen that is in violation of the International Constitution and their obligations to the International, then it is my duty to bring it to the attention of the proper authorities within the union.

Q. By the way, who is the head of Local 19 now?

A. At the present time the president is a man named Jack Price, P-r-i-c-e.

Q. And who is the business agent?

(Testimony of Bill Gettings.)

A. One Mr. Fred Richardson.

Mr. Howard: That is all I have.

The Court: That is all, Mr. Gettings. You are excused.

(Witness excused.)

The Court: Is there anything further, Mr. Poth?

Mr. Poth: Nothing, your Honor. I would like to move at this time that we be dismissed [84] from any further connection with these proceedings.

Mr. Howard: I would oppose a dismissal of the defendant.

The Court: I will rule the same as I did on Saturday. I am not dismissing you out of the case, but as far as this proceedings is concerned you are not here.

Mr. Poth: Thank you.

(Thereupon oral argument of counsel was rendered following which the Court rendered decision as follows):

The Court: In view of the extended hearing which has been had and the taking of testimony at some length, I am going to treat this as a hearing for temporary injunction rather than for the limited purpose of restraining order only. If anyone objects to that I will be glad to hear from them later about it. I believe that I am authorized to do that, and I think under the circumstances, considering the rather extended range of testimony taken and argument given, that there would be no purpose

in merely setting the matter down now for further hearing on temporary injunction. [85]

While the particular issue submitted in this proceedings is quite narrow, and the specific circumstances of limited importance, that is, whether or not the Nikolas be permitted to discharge at the Port of Tacoma, the basic considerations involved are of vast significance and importance not merely to the particular parties but to the nation as well. The well being and security of the United States in a particularly critical area of national concern at the present stage of world history, namely, in the field of international commerce, comity, and law, may be involved. Of course, the judiciary may only consider such questions to the extent of the jurisdiction of the court.

The resentment of the defendants and their members at what they regard as unfair competition, as it were, and their efforts to remove it, are quite understandable and certainly not without strongly sympathetic points. If the issue before me were to be judged on that basis, this court would have little inclination to consider at any length interfering with the controversy on one side or the other. However, rightly or wrongly, I am fully satisfied that far broader concerns [86] are involved here. I must keep in mind that he who sits in this place must have the interests of the nation in mind and treat the controversies that come here, where the issues permit, on a national or international basis as the subject matter indicates.

It is regrettable that a District Judge rarely has the adequate time and the benefit of extended research and full briefing that others in higher echelons of the judiciary enjoy, to utilize in solving the important questions that are presented usually, as in the present instance, on short notice and in emergent circumstances. A District Judge, generally, as in this case, must decide important questions with only limited time for research and contemplation by either counsel or the court. Nevertheless, one must do his best in whatever situation he finds himself and that I hope I may do on this occasion.

None of the cited cases, excepting only Benz and Lauritzen, were concerned either directly or indirectly with international commerce, obligations, or law. All of the cases cited were concerned solely with local or national interests and law as distinguished from those international [87] in character. The reasoning of Judge Solomon, as reported to me by Mr. Mosser in the argument this morning, in granting the restraining order and later temporary injunction in the Benz case, is quite persuasive, although, of course, not controlling. I myself think that it is extremely doubtful whether the Norris-LaGuardia Act is applicable to cases of interference in a United States port with the lawful performance of a lawful contract by a foreign vessel and crew of a friendly foreign nation. While I have had no opportunity to review the history of that Act, I would be tremendously surprised to find that the Congress even considered or discussed whether the

Act was to be applicable in the field of international law and commerce. I think it unnecessary to dilate at length upon the reasoning by which I reach the conclusion that Norris-LaGuardia is not applicable, except only to say that I have reached the conclusion after very carefully reading and considering each of the cases cited.

If I could stop at the point of my doubt, I would be obliged to deny the relief sought because if the authority to issue a restraining order and injunctive relief of any character be doubtful, it [88] must not be exercised. I hope I have the intellectual integrity to fully follow that long established, traditional concept of Federal Courts. Down through the years Federal Courts have persistently refused to take jurisdiction or exercise it where existence of the jurisdiction was in doubt. I myself frequently have declined to exercise jurisdiction because of reasonable doubt of having it.

Thus, I say that if I need go no further than the present point: namely, to indicate my doubt of the applicability of the Norris-LaGuardia Act, there would be an end of it. I go further, however, because in my judgment interference in a United States port with the lawful performance of a lawful contract by a foreign vessel and crew of a friendly foreign power, is conduct which amounts to an unlawful interference with international commerce and with the obligations of the nation under international law and the comity of nations.

Thus, I believe that the conduct here complained

of and shown by the evidence submitted on this hearing, falls fully within the limitations stated in Section 107 of the Norris-LaGuardia Act [89] in that the conduct is unlawful and that there is ample threat that it will be continued unless restrained. I am satisfied that substantial and irreparable injury to foreign nationals will follow; that the injury to the complainants without the relief now sought will be far greater than the injury to the defendants if the relief be granted, and that there is no adequate remedy at law.

I reach this conclusion in essence for the reason, as indicated during the argument when I questioned Mr. Vance, that the philosophy of all these cases dealing with this particular aspect of Norris-LaGuardia are to the effect that lawful conduct, conduct which in and of itself is not unlawful, can not be restrained by a Federal Court under Norris-LaGuardia regardless of how evil the purpose may be for which that conduct is employed. On the other hand, if unlawful conduct be employed for the finest and most lawful purpose in the world, and the elements stated in Section 107 be present, it may be restrained under the Norris-LaGuardia Act.

Now, the point of our case is that because we have international obligations involved here of paramount importance to the welfare and security [90] of the nation, particularly at this critical time in world history, the interference with wholly lawful activities of the commerce of a friendly foreign power are unlawful, and, therefore, regardless of how well founded or grounded the reasons for employing that

unlawful conduct, the court has the power and the duty to restrain it.

As I see it, there is no case thus far in which a Federal appellate court, either in a Circuit or the United States Supreme Court, has squarely reviewed this question. The closest approach is 71 Federal 2d, 284, Levering vs. Norin, but there, international considerations were not involved. It was purely a local dispute. The injunctive relief granted in the Benz case clearly was not reviewed either by the Circuit or by the United States Supreme Court. In this light of this proceeding I see why the Circuit Court was at such pains to indicate that they were not reviewing it and why Judge Pope wrote an opinion emphatically indicating that that phase of the case was not being reviewed.

So the only authority, if it be an authority, that we have precisely and squarely on our issue is Judge Solomon's decision in the Reviera case. [91] As Mr. Levinson pointed out in argument, there may be some distinction between that case and the present case due to the fact that the disputants there were all foreigners. I am inclined to think that is a distinction without a difference, but I do not regard it as necessary to decision of the present case to concern myself with that.

In my judgment, the conduct complained of must be restrained as an unlawful interference with international commerce. It is so ordered.

(Thereupon a short recess was taken.)

Mr. Vance: May it please the Court, regarding this Panama Steamship Company case, we are confronted with a difficult problem concerning a review of your Honor's ruling, and, of course, in the absence of some word in some way to the contrary, the only way to keep the case alive is an obvious one. We understand in conversation that perhaps counsel is willing to stipulate in open court that as a part of the findings it may be found that the vessel not only will make this trip but likewise in other similar trips into this port, and I would like to ask counsel in open court now if that may be stipulated to in the findings.

Mr. Levinson: Otherwise it would be moot again.

The Court: If there is any way I can cooperate to make it reviewable, I will be very happy to do it.

Mr. Howard: If the Court please, it is my understanding that either this ship or other similar foreign flagships——

The Court: Under similar conditions.

Mr. Howard: Under similar conditions will be making calls.

Mr. Levinson: Hadn't we better limit it to this defendant's ships—plaintiff's ships, I mean?

Mr. Howard: That might be true, Mr. Levinson, as far as one of the plaintiffs is concerned but not as far as all of them.

Mr. Vance: There you are, your Hoonr. I take it that the Court's injunction will go no broader than the plaintiffs in the action, and if they reach in the other pocket and pull out another one of

those corporations, your Honor has heard the evidence.

The Court: Well, does that make any difference as far as getting a review of the matter is concerned? What you want to find out is what the Circuit Court and the United States Supreme Court [93] are going to say about. If you get it said with respect of any single plaintiff, isn't that enough?

Mr. Vance: If this plaintiff takes this vessel out of the harbor, which he will do, under your Honor's ruling, then, the thing is moot unless there is some showing that this plaintiff——

The Court: He said one or more of the plaintiffs. I think you misunderstood him.

Mr. Vance: I am sorry. It may be agreed, then, as far as the Court's findings are concerned, it will be one or more of the plaintiffs.

The Court: Do you want to make that a part of the record just by this statement here?

Mr. Vance: By the stipulation and the finding of the Court, then.

The Court: So found.

(Thereupon the Court recessed and reconvened the following day, Tuesday, June 17, 1957, at 2 o'clock p.m., and the following proceedings were had, to-wit):

The Court: Good afternoon, gentlemen. I asked you to be on hand today for the consideration of entering the Findings, Conclusions, and Temporary Injunction. Because of developments arising after you departed yesterday I asked my Law Clerk, Mr.

Hilpert, to telephone each of you and advise [94] you of the substance of what those matters were.

Now, in brief, in rendering the decision yesterday I was in error in at least two particulars, possibly because the particular matters were not previously discussed in the argument nor given adequate consideration. In any case, inquiry was made by counsel at the very end of the ruling, and after it had been announced it raised a question in my mind with respect of two phases of the matter. We immediately looked into those phases of it and became satisfied that the Court was in error in those particulars.

Now, the particulars are, first, that I off-hand had thought that subsection (c) of Section 107 of the Norris-LaGuardia Act was concerned only with physical property and not intangible property and property rights. In checking on that I found that in two cases, at least, it has been held to the contrary; name, Tri-plex Shoe Company vs. Cantor, 25 Federal Supplement, 996, a District Court decision in 1939 by the Pennsylvania District Court, and Knapp-Monarch Company vs. Anderson, 7 Federal Supplement, 332, an Illinois District Court decision in 1935. Both of those cases held that the term "property" as used in 107(c) means [95] not only tangible property and physical property, but also the right or use or enjoyment of property and the right to pursue a business or trade, and so on.

Now, the second error of yesterday was in my considering that the temporary injunction should

restrain future conduct by some of the other parties. As I recall, that came up in connection with a question by Mr. Levinson at the very end of the hearing, and it was put in somewhat of an offhand manner just as I was leaving the bench. I mistakenly stated that the injunction should include all parties with respect of future possible actions. Of course, when we looked at the Norris-LaGuardia Act and examined subsection 107(e), it is quite apparent that the injunction should not restrain persons or organizations not shown to have actively participated in the conduct to be restrained. Accordingly, any injunction here should be modified.

Now, with respect of the first point; namely, that intangible property and property rights are involved in sub-section 107(e) as well as physical property, it puts a different light on that section in my mind and convinces me that the [96] requirement of that sub-section is met by the proof in this case; namely, that there has been an inability and is an inability on the part of local or state or national authorities, public officers, to provide protection for the rights violated, and accordingly, I propose to so find.

I notice in the Findings, 22, that it is put in this language, that is, proposed Finding 22, "Public officers charged with the duty to protect plaintiff property are unable to furnish adequate protection as shown by the lack of evidence of any such action by such authorities." I do not object to that statement because I think it is correct, and there is some inference that might be drawn from the fact that

no objection had been taken during that period of time since June 10, that the Nikolas has been in the harbor undocked.

It seems to me that there should be added to that a finding to this effect, "That no public officer, either local, state, or national, is charged with the duty or in fact authorized to provide protection of the character needed here by preventing the activities of the Will-O-Bee in the harbor," and accordingly, I think that [97] thought in appropriate language should be included in that finding.

Now, I would be glad to hear from either or both of you with respect to the form and content of the Findings, Conclusions, and Temporary Injunction.

Mr. Howard: If the Court please, we have submitted these with the thought that the Court might desire to consider the alternatives either by the first set that was drawn or the—that is, as to page 7 and 7a, or the alternative on page 7. Now, actually, I note that on the alternative page 7 we did not include the finding as far as the public officers.

The Court: I think it should be included, and it should be included as I have indicated.

Mr. Vance: You had that, Mr. Howard. You left out 23 which is the dispute between—isn't that correct?

Mr. Howard: No, I think we left it out and substituted another, counsel, is what it amounts to.

The Court: The original that I have which I am looking at ends at line 13 with the word "authority." Then, it starts again at page 27, [98] "Where-

upon the Court makes the following," and so on and so forth.

Mr. Vance: Maybe if I went ahead with the objections, I believe you brought a secretary with you to make these corrections?

Mr. Howard: No, I did not.

The Court: You may use my secretary if they are not too extended, because I know you both desire to get it entered without the necessity of your coming over here again.

Mr. Vance: And we under stipulation with counsel, until the settlement, we have ceased picketing, and there will be no difficulty with that particular thing, and we might get our objections settled.

The Court: All right. Do you have in mind what I propose to add to 22, do you? In other words, my thought about it is simply is this, that while I find the conduct of the Will-O-Bee unlawful under the international obligations of the nations, there is no city ordinance, state statute, or for all that I know, any Federal statute that prohibits a boat from cruising around in the harbor with a sign on it.

Mr. Vance: I think I understand your Honor's [99] theory on that.

The Court: I don't expect you to agree with it, but that is my thought about it.

Mr. Vance: I was wondering if your Honor would care to make this further finding, then, on the same paragraph, that there has been no fraud or any violence or threat thereof by the defendants? It is my theory that the Court's only power

is an injunction under the Norris-LaGuardia Act and under that Section 107(e), is to restrain fraud or violence.

The Court: If you mean in the sense of physical violence, there is no problem about that. I will so find. But whether or no the coasting of a boat back and forth in front of another boat with a sign on it under these particular circumstances comes within the definition of violence in the sense that it prohibits the ship from proceeding, and so on, certainly nobody has been assaulted or anything of that kind, nor even threatened with it, nor has there been any indication that it would happen, and I am certain it wouldn't. If you gentlemen can get together some appropriate language to that effect, I am certain you would have no [100] objection to that being done.

Mr. Vance: My suggestion would be and it would read, "There has been no fraud or violence or threat thereof by the defendant."

The Court: Yes, I would think so.

Mr. Vance: To go back, and I want to say in court that I am appreciative of counsel's efforts in drafting these findings. I think counsel has made a commendable effort to draft them along the lines of the issues as framed and drawn and ruled upon.

Referring to page 3, your Honor—we have no objection to page 2. Page 3, line 22, I believe the word "lawful" should be stricken. I do not believe saying it is a "lawful charter" is a finding of fact, and I think all *this* is needed is "pursuant to charter and enfreightment contract" is sufficient.

The Court: Of course, I said that in words to that effect.

Mr. Vance: It would be a conclusion of law, your Honor, that this was a "lawful" contract, and so forth. I think that it is just pursuant to charter and enfreightment contract." I think the word "lawful" there—— [101]

The Court: Well, I can see your point. On the other hand, in some particulars it is a fact finding.

Mr. Vance: We didn't produce any evidence to challenge it at this proceedings, and I think that for the Court to so find as a matter of fact here that it was lawful——

The Court: Well, it was lawful, and whether that should technically be in a finding or a conclusion, I don't know, but I can't see any possible harm that would come from leaving it there. Your point may be technically well taken because of the legal characteristics of that word, but, on the other hand, it may well be that it is a fact finding as well. I think I will leave it there.

Mr. Vance: Very well, your Honor.

Then, on the next page, page 4, the only objection we have there is article 8, once again for the same reason but perhaps a little stronger situation. It reads now, "Promptly after having so arrived, said steamship became lawfully entitled to discharge and deliver said cargo," which, of course, is a pure conclusion of law.

The following is a finding of fact, "The [102] remainder having then been cleared and passed by United States Immigration." I should think

that ought to be changed. The words "became lawfully entitled" have no place there, I think, here, and should be changed to the words, "attempted to discharge and deliver," and so on, or some other words. I do not believe that the words, "became lawfully entitled to discharge" are not in issue in this case and should not be made a part of these findings of fact.

The Court: Well, that is what I found and held, that they did become lawfully entitled to discharge. I think I will leave it.

Mr. Vance: Very well, your Honor. I have two more objections which I want to make for the record which are of the same nature.

On page 5, Finding XV, the word "unlawful" again appears. I object to that and I think it should just read as it reads without the word "unlawful."

The Court: Same ruling. I will leave it in.

Mr. Vance: Lines 13 and 14. I object to the word "right" being used, and particularly the words, "the right of plaintiffs to carry out international—" and so forth. I think if it [103] is a finding of fact it should state particularly the ability of plaintiffs to carry out an international voyage other than the word "right."

The Court: I think I will let it stand as drafted.

Mr. Vance: Line 15, I object to the words "lawful" again. The vessel registered by a friendly, foreign nation would be a finding of fact.

The Court: I will allow it to stand.

Mr. Vance: Now, if your Honor, there are a number of changes—only two, I guess, two in the

findings and one in the decree. Section XVI of the Findings, finding XVI, that is the finding based upon stipulation of counsel entered into after the close of the hearing and after the court announced its decision. We think that there should be added two words, and I haven't had an opportunity to discuss this with counsel——

The Court: Maybe he will agree to it.

Mr. Vance: After the words "Puget Sound area" we propose to add, "and to the Hooker Electro-Chemical plant in Tacoma," and after the word "vessel"—— [104]

The Court: Just a moment. What is your opinion of that, Mr. Howard?

Mr. Howard: I don't know, your Honor. I know that they—for all that I know they might be coming into other plants other than Hooker Chemical.

The Court: Do you know that they are coming to Hooker?

Mr. Howard: Yes, I do.

The Court: Then put it in if you want to make the best opportunity for you to get a review of this that we reasonably can.

Mr. Vance: After the word "vessels" we would like to have added, "Owned, operated, or to be chartered by plaintiffs," or some of them, just to make clear that — you see, because they talk about——

The Court: That was a point we talked about yesterday.

Mr. Howard: No objection.

The Court: All right, add it.

Mr. Vance: Then, in the same line to clarify that 19, line 28, after the words "threaten to picket the same," to add, "and other vessels of the plaintiffs similarly engaged," as [105] referred to in finding XVI above.

The Court: I see no reason why that shouldn't be included, do you?

Mr. Howard: No objection, your Honor.

The Court: Include it.

Mr. Vance: In order to make the decree accord.

The Court: That is just a matter of words, isn't it?

Mr. Vance: Just a matter of adding some words to make the decree, because the decree only bars us from picketing the Nikolas and I think that the decree should reflect the findings and the intention of this Court, the intention of the plaintiffs to secure relief against this type of picketing on behalf of these plaintiffs by this defendant.

The Court: The only thing is, do we run afoul to that Section (a)?

Mr. Vance: We are restricting it to these parties.

The Court: I don't offhand see any reason why that can't be done that way. It doesn't seem to foul Section (a) in any way. Do you see any objection to that, gentlemen? [106]

Mr. Mosser: No, your Honor.

The Court: Add that, then, Mr. Vance.

Mr. Vance: I will discuss that with counsel, your Honor.

The Court: You won't have any trouble getting that language.

Mr. Vance: Now, then, in connection with our theory of the case, I would like to have a finding added which I believe is undisputed in the evidence, and I think it would appropriately follow finding XIX, to fit between XIX and XX. I would like to add this finding by the Court, "As a result of the engagement in this trade by the plaintiffs in vessels of foreign registry——"

The Court: This is a paragraph to be inserted?

Mr. Vance: "As a result of the engagement in this trade by the plaintiffs in vessels of foreign registry, vessels of American registry and operated under contract with the defendant union, have lost or will lose such business with resultant loss of employment to defendants' members."

Mr. Mosser: Your Honor, on the last one that Mr. Vance proposed, we have no objection to [107] that. I would like to suggest that on the finding he requested with regard to fraud and violence, that it read, "There has been no fraud or physical violence to persons or tangible property or threat thereof," in order to protect your Honor's theory.

The Court: I am sure Mr. Vance would agree that that is what I tried to say without his agreeing to my being right in so saying it.

All right, I believe that covers all the matters.

Recess subject to call.

(Thereupon the Court recessed.) [108]

[Endorsed]: Filed July 6, 1957.

[Endorsed]: No. 15637. United States Court of Appeals for the Ninth Circuit. Marine Cooks & Stewards, A.F.L., a voluntary association, James O. Willoughby, Virgil Rogers and Willard Richards, Appellants, vs. Panama Steamship Company, Ltd., a corporation, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed: July 13, 1957.

Docketed: July 22, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15637

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, VIRGIL ROGERS and WILLARD RICHARDS, Appellants,

vs.

PANAMA STEAMSHIP CO. LTD., a corporation, et al., Appellees.

STATEMENT OF POINTS

The appellants, Marine Cooks & Stewards, AFL, a voluntary association, James O. Willoughby, Virgil Rogers and Willard Richards, intend to rely on the following points on appeal:

1. The Norris-LaGuardia Act (29 USCA Section 101ff.) governed the District Court's jurisdiction insofar as injunctive relief was concerned.

2. Upon the record herein the injunction sought and granted was beyond the jurisdiction of the District Court because of the provisions of Section 4 of the Norris-LaGuardia Act (29 USCA Section 104).

3. Upon the record herein the Appellees were not entitled to an injunction because of failure to

satisfy the requirements of Section 7 of the Norris-LaGuardia Act (29 USCA Section 107).

VANCE & PETERSON,

Attorneys for Appellants, Marine Cooks & Stewards, AFL, a voluntary association, James O. Willoughby, Virgil Rogers and Willard Richards.

[Endorsed]: Filed July 22, 1957. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

APPELLANTS' DESIGNATION OF THE RECORD MATERIAL TO THE APPEAL

Appellants herewith designate all of the record as forwarded by the Clerk of the U. S. District Court as material to the consideration of the Appeal herein.

VANCE & PETERSON,

Attorneys for Appellants, Marine Cooks & Stewards, AFL, a voluntary association, et al., James O. Willoughby, Virgil Rogers and Willard Richards.

[Endorsed]: Filed July 22, 1957. Paul P. O'Brien, Clerk.

[fol. 139]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Before: Healy, Pope and Lemmon, Circuit Judges.

MINUTE ENTRY OF ORDER OF SUBMISSION—January 15, 1958

Ordered appeal herein argued by Mr. J. Duane Vance, counsel for the Appellants, and by Mr. Charles B. Howard, counsel for the Appellees, and submitted to the Court for consideration and decision.

[fol. 140] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 15,637

MARINE COOKS & STEWARDS, A.F.L., et al., Appellants,

vs.

PANAMA STEAMSHIP CO., et al., Appellees.

Before: Healy, Pope and Lemmon, Circuit Judges.

ORDER SETTING ASIDE SUBMISSION OF CASE AND SETTING FOR REARGUMENT—Filed May 21, 1958

The above entitled case was heretofore argued and submitted for decision to a panel of this Court including Judge Lemmon who died before the Judges of the panel had agreed upon a decision.

Now, therefore, it is ordered:

That the submission of the case for decision be, and hereby is set aside and the case calendared for reargument before a full panel of the Court.

William Healy, Walter L. Pope, Circuit Judges.

[fol. 141]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Before: Pope, Healy and Orr, Circuit Judges.

MINUTE ENTRY OF ORDER OF SUBMISSION—
September 29, 1958

Ordered appeal herein reargued by Mr. J. Duane Vance, counsel for the Appellants, and by Mr. John D. Mosser, counsel for the Appellees, and submitted to the Court for consideration and decision.

[fol. 142]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Before: Pope, Healy and Orr, Circuit Judges.

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINIONS AND FILING AND RECORDING OF JUDGMENT—April 6, 1959
(omitted in printing).

[fol. 143]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 15,637

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, VIRGIL ROGERS and WILLARD RICHARDS, Appellants,

vs.

PANAMA STEAMSHIP COMPANY, LTD., a corporation, et al., Appellees.

Appeal from the United States District Court for the Western District of Washington, Southern Division.

OPINION—April 6, 1959

Before: Pope, Healy and Orr, Circuit Judges.

Orr, Circuit Judge:

Upon the complaint of appellees the trial court issued an order enjoining appellants from conducting certain alleged picketing activities. On the appeal lodged in this court we have had two hearings.

At the first hearing appellants rested their contentions on lack of jurisdiction of the trial court to issue the temporary injunction because of the prohibition contained in the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C.A. §101 et seq. (1956).

On the second hearing their contention was broadened to include an assertion of a lack of statutory basis for the district court to consider this action at all on the civil side either as to the injunction or the claim for damages, which latter claim is still pending below.

The essential facts follow.

The S.S. Nikolos, a vessel registered under the Liberian flag and owned by appellee Panama Steamship Company [fol. 144] Ltd., a foreign corporation, arrived in Tacoma Harbor in the State of Washington during the early morning hours of June 10, 1957. Its master, officers and crew were aliens. The time-charterer, appellee Seatankers, Inc., is not a citizen of the United States.

The ship was carrying a cargo of bulk salt loaded at a port on the West Coast of Mexico. The consignee was the Hooker Electrochemical Co. to whom the cargo was to be delivered at a berth in Tacoma Harbor. The ship was cleared and passed by the Immigration, Quarantine and Custom authorities and was therefore lawfully entitled to discharge its cargo.

While at anchorage awaiting the assignment of a berth, the ship was approached by a small vessel, the "Will-O-Bee", displaying a "Picket Boat" sign and then and there operated by appellants Willoughby, Rogers, and Richards, members of appellant Marine Cooks & Stewards AFL, Willoughby being the duly authorized Port Agent. Willoughby boarded the Nikolos and notified the master that the ship was being picketed by his association.

The "Will-O-Bee" continued to circle around the Nikolos di[illegible]ying its picket signs. In addition, Willoughby threatened the Hooker Electro-Chemical Co. with the establishment of a picket line at its dock if the Nikolos was allowed to berth.

In awarding a temporary injunction pending a final determination as to damages and the issuance of a permanent injunction, the trial court made findings to the effect that the picketing conduct of appellants was an unlawful interference with international commerce and particularly with the right of appellees to carry out an international voyage and maritime contract of affreightment, utilizing a vessel lawfully registered with a friendly foreign nation and manned by an alien crew under foreign shipping articles. Further findings are that appellees have also entered into and are seeking other like contracts; that by reason of the picketing the Nikolos has acquired the reputation of a "hot ship" and that appellees' reputation for carrying out their contractual obligations have become impaired.

The trial court further found that the United States as a nation has international obligations with respect to commerce and with respect to the relations of this country with [fol. 145] friendly maritime nations and that the acts of the appellants might impair such obligations and cause irreparable damage to such relations. It found that the appellees had no adequate remedy at law and that the public officers charged with a duty to protect appellee's property were unable to furnish adequate protection as shown by lack of evidence of any action by such authorities and the fact that no public official was charged with such responsibility.

The trial court also found that there had been no fraud; no physical violence to persons or injury to tangible property or threats of such by appellants.

It seems to be an accepted fact that there was no dispute between the members of the crew or any of them and the master or owners. The picketing was purely a matter of protest by the appellants of the alleged threat to American working standards created by the foreign crews who work under substantially less favorable circumstances than crews on American ships.

In now turning to a consideration of the questioned jurisdiction of the trial court to entertain the action, we keep in mind that the jurisdiction of a federal district court rests upon statutory grant, Sheldon v. Sill, 49 U.S. (8 How.) 440 (1850), and he who invokes that jurisdiction has the burden of establishing it. McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936).

Appellees upon whom rests that burden specifically disclaim diversity of citizenship as creating the statutory basis. See 28 U.S.C.A. §1332.[1]

Appellee has also refrained from invoking jurisdiction on the admiralty side under 28 U.S.C.A. §1333. This position may have been dictated by the unavailability of a jury [fol. 146] trial on the damage issue in admiralty and because of appellee's belief that admiralty cannot afford injunctive relief.[2]

Appellee rests his claim of jurisdiction on 28 U.S.C.A. §1331 creating general federal question jurisdiction in the district court. Section 1331 provides that "the district courts shall have original jurisdiction of all civil actions wherein the matter in controversy . . . arises under the Constitution, laws or treaties of the United States." (It is clear and conceded that the amount in controversy required by the statute in force at the time of the institution of suit was met.)

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[1] Apparently appellee rejects the diversity theory because some of the appellants are associations whose citizenships are determined by that of their members [see e.g. Chapman v. Barney, 129 U.S. 677 (1889) (joint stock co.); Levering & Garrigues Co. v. Morrin, 61 F.2d 115 (2d Cir. 1932) (labor union)] and some of the members are aliens as are all of appellees. Under prior forms of §1332 it has been held there is no jurisdiction under such circumstances. Ex Parte Edelstein, 30 F.2d 636 (1929).

In view of the result we reach, it is unnecessary to consider the difficult statutory and constitutional questions that would have been involved had appellee urged this as a ground for jurisdiction.

[2] It has been held that the admiralty court does not possess the distinctive remedial powers of equity. See The Eclipse, 135 U.S. 599 (1890); Gilmore & Black, The Law of Admiralty 37-39 (1957). In particular it has been held that admiralty has no power to issue an injunction. Sound Ma[illegible]ne & Mach[illegible]ne Corp. v. Westchester County, 100 F.2d 360 (1938), cert. den. 306 U.S. 642 (1939).

In sustaining jurisdiction under §1331 the first hurdle is the requirement that the substantive law creating the cause of action be federal or that some element of federal law must be established as part of the cause of action. Smith v. Kansas City Title & Trust Co., 255 U.S. 180 (1921). That hurdle is cleared here because appellee's cause of action is based on interference with maritime traffic on navigable waters and on interference with the performance of a maritime contract constituting maritime torts.[3] The substantive law of such torts is basically federal. See Pope & Talbot v. Hawn, 346 U.S. 406 (1953); Gilmore & Black, *op. cit. supra* note 2 and 2, 45 and cases cited therein. See also Romero v. International Terminal Operating Co., No. 3 U.S. October Term 1958, decided February 4, 1959 ("the federal nature of the maritime law administered in the federal courts has long been an accepted part of admiralty jurisprudence").

Having determined that the cause of action in the instant case depends upon federal law, the next problem is whether it arises under the "Constitution, laws or treaties of the United States" within the meaning of §1331.

[fol. 147] Most forceably argued pro and con has been the line of controversy typified by Doucette v. Vincent, 194 F.2d 834 (1952) in the first circuit, Paduano v. Yamashita, 221 F.2d 615 (1955) in the 2nd circuit; Jordine v. Walling, 185 F.2d 662 (1950) in the 3rd Circuit and Jenkins v. Roderick, 156 F. Supp. 299 (1957) in the Massachusetts District Court. All of those cases involved the question of whether certain seamen or longshoremen suing for personal injuries could get a jury trial by proceeding on the law side of the federal court under §1331. The theory in favor of such jurisdiction was that although the claims were cognizable in admiralty under 28 U.S.C.A. §1333[4] the sav-

[3] See e.g. The Plymouth, 70 U.S. (3 Wall.) 20, 36 (1886) wherein the Supreme Court stated that "every species of tort, however occurring . . . if upon the high seas or navigable waters, is of admiralty cognizance"; See also Sidney Blumenthal & Co. v. U. S., 30 F.2d 247 (2d Cir. 1927) cert. den. 279 U.S. 847.

[4] "The district courts shall have original jurisdiction, exclusive of the courts of the states, of . . . any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." (emphasis added).

ings clause of that section, in bold face type in note 4, allowed them to proceed in any court competent to give an *in personam* remedy of damages and 1331 created such competence in the law side of the federal district court.

The existing difference of opinion has been resolved by the U. S. Supreme Court in the recent Romero case, supra, wherein it was held that "saving clause" actions are not within the grant of 1331. In that opinion it is stated that "from 1875 to 1950 there is not to be found a hint or suggestion to cast doubt on the conviction that the language of that statute (1331) was taken straight from Art. III, §2, cl. 1 (of the Constitution) extending the judicial power of the United States 'to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority.' Indeed what little legislative history there is indicates that this was the source. Thus the Act of 1875 (creating the predecessor of 1331) drew on the scope of this provision of clause 1, just as the Judiciary Act of 1789 (creating the admiralty jurisdiction) reflected the constitutional authorization of clause 1 of section 2 (sic.), which extended the judicial power to all cases of admiralty and maritime jurisdiction." . . . "The grant of jurisdiction over 'suits of a civil nature at common law or in equity . . .' as derived from Article II, could not reasonably be thought of as comprehending an entirely separate and distinct class [fol. 148] of cases—'Cases of admiralty and maritime jurisdiction'."

The Supreme Court thus held that Congress in utilizing the language of the Constitution in its statutory grants of jurisdiction intended to separate *admiralty and maritime* on the one hand from *law and equity* on the other. Therefore appellee's argument that jurisdiction can be found under §1331 because it is a savings clause action would be of no avail. But we are convinced that this is not a saving clause action. This is an action for an injunction, and admiralty at no time has had jurisdiction of such actions. We emphasize, this is not an action "saved" from the exclusive jurisdiction of admiralty; it is one never cognizable in admiralty. In terms of the Supreme Court distinction made in Romero, it is not a "case of admiralty and maritime

jurisdiction" but a "suit of a civil nature . . . in equity" arising because of a breach of a federal duty. It can not be said of this action as it is of "saving clause" actions, that Congress did not intend to give a double jurisdiction as there is no jurisdiction under 1333.

In order to understand the absence of a sufficiently broad equitable jurisdiction in admiralty to grant an injunction it is helpful to briefly trace the history of that court and body of law. Its early development is not entirely clear, but it apparently developed much as the law merchant during the renaissance period of world commerce. Continental scholars then busy adapting the Roman (Civil) Law were attracted by this developing customary law and admiralty still bears their imprint.

The English port towns as well as the continental ones had "maritime courts" that adjudicated according to the customary sea law. The English development was affected by the creation of the office of the Lord High Admiral who originally was a naval officer concerned mostly with suppression of piracy. It is not clear just how and when he achieved jurisdiction over civil maritime matters, but by around 1400 that jurisdiction was so broad that Parliament moved to limit it by statute to "a thing done upon the sea". 13 Richard II, c. 5 (1389) and 15 Rich. II, c. 3 (1391). [fol. 149] It still maintained a substantial jurisdiction as a court of record, however, until eventually it became involved in the great struggles for power among the various English courts. It then suffered severe narrowing of its jurisdiction because of the jealousy of the common law courts which issued writs of prohibition preventing it from entertaining actions of various kinds. For example, contract actions to

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The history here set out is mostly derived from Gilmore & Black, The Law of Admiralty (1957) and from Morrison, The Remedial Powers of Admiralty, 43 Yale Law Rev. 1 (1933).

The common law judges were also fearful of the power of admiralty that sat without a jury. It is noteworthy that at an earlier time admiralty apparently did have jury trials at least in some actions. See Mathiasen, Some Problems of Admiralty Jurisdiction in the 17th Century, 2 Amer. J. of Legal History 215 (1958).

be cognizable in admiralty not only had to concern the sea, but had to have been made at sea.

Apparently English lawyers at the time of the adoption of the American Constitution acted on the broad rule that "nothing was to be left to the Admiralty of which the common law could conveniently take cognizance . . ." —a sort of reverse savings clause. Anything for which a writ could be gotten from a common law court would not be allowed in admiralty; only what was not available elsewhere could admiralty take.[4]

Early in American judicial history the problem of the breadth of admiralty jurisdiction arose. As reference points there was the English jurisdiction already described; the English Colonial Admiralty courts had much broader jurisdiction since it was convenient for Britain to have a non-jury court of broad power in the colonies; and the broad jurisdiction of the continental admiralty courts which was similar in extent to the English prior to curtailment.

Earlier American cases frequently assumed a narrow jurisdiction, but in Waring v. Clarke, 46 U.S. (5 How.) 440 (1847) the broad continental concept was accepted. As later stated in Insurance Company v. Dunham, 78 U.S. (11 Wall.) 1, 24 (1870), "the admiralty and maritime jurisdiction of the United States is not limited either by the restraining statutes or the judicial prohibitions of England, but is to be interpreted by a more enlarged view of its essential nature and objects, and with reference to analogous jurisdictions in other countries constituting the maritime commercial world . . ."

[fol. 150]

But when it came to equitable jurisdiction there was no such parallel enlightenment. The relations between the admiralty and the Chancellor in England had escaped the attention which had been paid to the famed struggle between the former and the courts of common law. Apparently in the beginning there was a concurrent jurisdiction of

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[4] Roscoe, Admiralty Practice (5th ed. 1931) at 8-9.

[5] The English admiralty jurisdiction was vastly enlarged in the nineteenth century, 3 & 4 Vict., c. 65 (1840), 13 & 14 Vict. c. 26 (1850), 24 Vict. c. 10 (1865). It is now a part of the High Court of Justice in a single division with probate and divorce.

sorts with a right asserted by the English Chancellor to take causes out of admiralty, the Chancellor being in a stronger position than even the common law courts with his injunctive powers. In *in rem* proceedings the Chancellor would not ordinarily invoke its concurrent jurisdiction unless the title came into dispute, but in "all proceedings *in personam* and in instances where any characteristically equitable relief was called for, the Chancellor always exercised the same full jurisdiction in maritime cases that he did in non-maritime cases." And the question of concurrent jurisdiction was eliminated by the *exclusion of the court of admiralty from the field*. The result was that such forms of relief as an accounting, specific performance, injunction, reformation or cancellation of contracts and relief against fraud generally, were available exclusively in Chancery." Morrison, supra at 11.

Notwithstanding the departure made by American courts from the narrow English restrictions imposed by the common law writs of prohibition, when determination of equitable rights and remedies were under consideration the English practice was followed. Thus it was held that equitable interests in a vessel must be left to ordinary land courts of equitable jurisdiction. See e.g. The Eclipse, 135 U.S. 599 (1890). Affirmative equitable relief has been consistently denied in admiralty under the prevailing view that admiralty does not possess the distinctive equity powers. See e.g. Davis v. Child, Fed. Case No. 3,628 (D. Me. 1840); The Eclipse, supra; The Robert R. Kirkland, 92 Fed. 407 (D.N.J. 1899). It has been specifically held that admiralty can not give injunctive relief. Schoenamsgruber v. Hamburg, 294 U.S. 454 (1935); Sound Machine & Marine Corp. v. Westchester County, 100 F.2d 360 (2d Cir. [fol. 151] 1938) cert. den. 306 U.S. 642 (1939); Paterson v. Dakin, 31 F. 682 (S.D. Ala. 1887)."

"There is a line of cases upholding the power of admiralty to assert equitable principles in actions otherwise within its province. "A court of admiralty is, as to all matters within its jurisdiction, a court of equity, it administers justice upon the large and liberal principles of courts which exercise a general equity jurisdiction." The David Pratt, Fed. Cases No. 3,597 at 24 (D. Me. 1839). But when the question of remedies is reached the courts have resorted

Thus this action or bill for an injunction to restrain a breach of a federal duty is an action that has arisen under the "law and equity" jurisdiction of §1331;[10] the remedy

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to the distinction between law and equity and have held that admiralty lacks the power to give equitable remedies. One commentator sees: "ground for hope that a doctrinal trend is in the making that would render the ordinary equitable remedies . . . available to the admiralty court . . . " Gilmore & Black, op. cit. supra note 2 at 39, based on the case of Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A., 339 U.S. 684 (1950) which held that admiralty could employ equitable powers when dealing with a case otherwise maritime in character. But that case cited The Eclipse, supra, as still being good law, stating: "Unquestionably a court of admiralty will not enforce an independent equitable claim merely because it pertains to maritime property."

It should be noted that admiralty by statute has been given injunctive power in certain limited areas not here applicable.

[10] It was not until 1875 that Congress passed the predecessor of §1331 first creating, except for a brief interval (Act of Feb. 13, 1801, §11, 2 Stat. 89, 92 repealed by Act of Mar. 8, 1902, 2 Stat. 132), the general federal question jurisdiction as we know it now. The legislative history of its passage leaves much to be desired in revealing any "intent" of the Congress. "In its original form the Act applied only to controversies involving diversity of citizenship and not to substantive federal rights." Frankfurter & Landis, The Business of the Supreme Court 66 (1927). The first section was designed to change certain features of the removal jurisdiction in diversity cases originally begun in a state court, and it created much controversy and dissent. Eventually the first section was struck out and the bill left the House containing only amendments to the procedure governing removal proceedings. In the Senate a substitute bill containing the eventual form of the Act was introduced and it passed the Senate the day of its introduction with only details arousing any discussion, and it was passed in the House in its same form. It is questionable whether the Congress had any consciousness of the enormity of the change in the judicial structure thus brought about. "Although this legislation in a very real sense revolutionized the concept of the federal judiciary, it passed almost unnoticed inside or outside the halls of Congress." Hart & Wechsler, The Federal Courts & The Federal System 729 (1953). See also Frankfurter & Landis, supra at 64-68.

"These courts (federal) ceased to be restricted tribunals of fair dealing between citizens of different states and became the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States." Frankfurter & Landis, supra at 65.

Considering the times of the enactment and the language of the statute it would seem that the purpose of such an Act would be to

[fol. 152] sought has at no time been within the "admiralty and maritime" jurisdiction of §1333.

Having jurisdiction of the action for the injunction, the district court as a court of equity may within its discretion exercise the traditional power of equity to "clean-up" the controversy by awarding damages incident to its equitable jurisdiction. Of course there would be no right to a jury trial.

The remaining question raised by appellant is that the trial court was without jurisdiction to issue the temporary injunction because of the prohibition contained in the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C.A. §101 et seq. (1956). It is our conclusion that the Norris-LaGuardia Act does not apply. This view is based upon the holding of the Supreme Court in Benz v. Compania Naviera Hidalgo, S.A., 335 U.S. 138 (1957).

The question before the Supreme Court in Benz was whether the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C.A. §141, so pre-empted the field of labor relations so as to deprive a state court of jurisdiction in a damage suit for wrongful picketing by an American union of a foreign vessel. The court held that there was no pre-emption because the Labor Management Act does [fol. 153] not apply to labor disputes arising solely out of conditions on a foreign vessel even though an American Union was the party defendant. There, as here, the argument was made by the union that the standard of work and pay on the foreign vessel was a threat to the welfare of the American union members, yet the Supreme Court held the Act inapplicable. We find no such greater interest re-

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provide a federal forum that would be sympathetic to and would become expert in the development of substantive federal law. To find that Congress had carved out an exception from so broad a statute would require some certain evidence. The Supreme Court found such evidence in Romero in the use of the Constitutional language by Congress in drawing the statutes creating separate jurisdictions for "law and equity" and for "maritime and admiralty." This case as we have indicated falls outside the latter and within the former. Thus we find no evidence that this action based on substantive federal law was meant to be excluded from the grant contained in §1331.

siding with the American union concerned in the instant case which would justify a differentiation of one from the other on that ground.

No legislative history has been brought forth to indicate that the Norris-LaGuardia Act should apply here, and as the Supreme Court said of the Taft-Hartley Act in Benz, and we think equally applicable to the Act now under consideration, "the whole background of the Act is concerned with industrial strife between American employers and employees." (353 U.S. at 143).

Appellant urges that the Taft-Hartley Act is a regulatory and substantive act whereas the Norris-LaGuardia Act is solely jurisdictional and thus it would be reasonable to deny the application of the former and still apply the latter. The answer is found in Benz where not only the application of the regulatory aspects of the Taft-Hartley Act, but also the whole complaint procedure and jurisdiction which could have provided protection for the foreign vessel against an unfair labor practice was denied.

If the Norris-LaGuardia Act was applicable here, the combination of such a holding and the holding in Benz that the Taft-Hartley Act administrative remedies are not available would result in there being no federal agency or court in which foreign commerce could seek protection. Such a result in the field of international commerce and relations should not be arrived at without more explicit direction from Congress.

Affirmed.

POPE, CIRCUIT Judge, Concurring:

The main problem here, as I see it, is whether what was said in Romero vs. International Terminal, ... U.S. ..... [fol. 154] (Feb. 24, 1959), requires a holding that Section 1331 of Title 28 does not confer jurisdiction on the court below.

I think Romero, in holding that Section 1331 does not give jurisdiction to a Federal District Court, sitting at law, over a seaman's claims against his employer for a maritime tort, did not arrive at that conclusion because the authors of the Act of 1875 which set up the provisions here relevant could not then envision that some day it would be held, as in

Pope and Talbot, Inc. v. Hawn, 346 U.S. 406, that the right there upheld was a "federal right of recovery." It seems self evident that when the Act of 1875 spoke of suits "arising under the Constitution or laws of the United States", it was not speaking only of suits conceived of by the Act's authors in 1875 as federal rights of recovery. The Act of course looked to the future.

The basis for Romero was quite different. As I read it, it proceeds upon the thesis that the 1875 Act did not contemplate inclusion therein of the "long established, smoothly functioning" maritime jurisdiction of the federal courts which had "been left unchanged since the Act of 1789."

But what we have here is something quite different. Here the relief sought was injunction against a maritime tort. Relief of that character is wholly unknown to an admiralty court. This is not a case in respect to which "federal admiralty courts had been completely adequate to the task of protecting maritime rights rooted in federal law." Therefore, the reason which induced the court to hold that the action in Romero was of a sort excepted from the grant of an "arising under" jurisdiction is absent here. If, as seems to be conceded, Romero establishes that jurisdiction under Section 1331 is subject to an implied exception as to cases falling within the admiralty or maritime jurisdiction, it follows that such exception should not apply here for this is not such a case, but rather a case unknown to admiralty.

[File endorsement omitted]

[fol. 155] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 15637

MARINE COOKS & STEWARDS, AFL, etc., et al., Appellants,

vs.

PANAMA STEAMSHIP COMPANY, LTD., etc., et al., Appellees.

JUDGMENT—Filed and entered: April 6, 1959

Appeal from the United States District Court for the Western District of Washington, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is affirmed.

[fol. 156]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Before: Pope, Healy and Orr, Circuit Judges.

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION ON PETITION FOR REHEARING—June 29, 1959
(omitted in printing).

[fol. 157]

IN UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 15,637

MARINE COOKS & STEWARDS, AFL, a voluntary association, JAMES O. WILLOUGHBY, VIRGIL ROGERS and WILLARD ROGERS, Appellants,

vs.

PANAMA STEAMSHIP COMPANY, LTD., a corporation, et al., Appellees.

OPINION ON PETITION FOR REHEARING—June 29, 1959

Before: Pope, Healy and Orr, Circuit Judges.

Per Curiam:

The appeal in this case was from the issuance of a preliminary injunction by the trial court. The function and purpose of a preliminary injunction is to prevent irreparable injury pending an ultimate determination of the action. In the present petition four reasons are set out as grounds for rehearing. Reason designated number 2 was not urged as a specification of error on appeal and was not presented on oral argument. Said ground number 2 is that the picketing complained of was not unlawful even if the Norris-LaGuardia Act, 29 U.S.C.A. §101 is not applicable. Inasmuch as the ground was not presented on the appeal we decline to entertain it on rehearing but leave it for consideration of the trial court in the proceedings leading to a final determination of the action for a permanent injunction. As stated by this court in Burton v. Mantanuska Valley Lines, 244 F.2d 647, 650 (9th Cir. 1957) [fol. 158] in considering the review of an interlocutory injunction:

> "necessarily the court must presuppose that in the case at bar it *may* turn out that plaintiff will ultimately lose. Thus the court *may* finally find the facts against the plaintiff who procured the temporary injunction. . . . And just as a court must of necessity obtain time in which to determine which party is right upon the facts, so in a substantial number of cases the time is necessarily required to resolve grave, difficult and complicated questions of law. If, in such a case, it is ultimately decided that the party who obtained the preliminary injunction cannot win, that in itself does not demonstrate that it was wrong to issue the injunction."

Grounds number 1 and 3 presented in support of a request for rehearing were fully considered in our opinion previously filed.

Ground number 4 presents for consideration alleged facts not before us upon the appeal, to the effect that the vessel involved was chartered by an American corporation. In its

statement of the case made by petitioner in its opening brief (page 3) reference to ownership and charter parties appear, from which no inference of American control can be logically drawn, indeed the inference is quite the opposite. For the same reason as given with respect to ground number 2 (failure to present on the appeal), we decline to consider the question on this petition and leave appellant to such action as it may choose to take if and when a permanent injunction is sought.

Petition for rehearing denied.

[File endorsement omitted]

[fol. 159] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 160]

SUPREME COURT OF THE UNITED STATES

No. 403, October Term, 1959.

MARINE COOKS & STEWARDS, AFL, etc., et al., Petitioners,

vs.

PANAMA STEAMSHIP COMPANY, LTD., et al.

ORDER ALLOWING CERTIORARI—November 16, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.